

**IN THE COURT OF SAVITA RAO, SPL. JUDGE, (PC ACT) CBI-01,**  
**(SOUTH) SAKET COURTS : NEW DELHI**

**CC No. : 03/13 (Old) , 39/2016 (New)**

**RC No. : 2 (E)/2002 CBI/EOU-1/N.D.**

**CBI/EOW-1/N.DELHI**

**Unique Case ID No. : DLST01-000011-2003**

**Under Sections 120-B r/w sec. 420 IPC and sec. 13 (2) r/w 13 (1) (d) of  
PC Act.**

**C.B.I.**

**Vs.**

**1. Om Prakash Aggarwal**

**M.D. , M/s Delhi Petroleum Products Limited**

**80, Humayun Pur, IInd Floor,**

**Safdarjung Enclave, New Delhi – 110029**

**R/o House no. C-4/125, Safdarjung Development Area, New Delhi**

**2. M/s Delhi Petroleum Products Limited**

**80, Humayun Pur, IInd Floor,**

**Safdarjung Enclave, New Delhi – 110029**

**3. Dinesh Kumar Bhaskar**

**S/o Sh. C.L. Bhaskar**

**The then Sr. Manager, Oriental Bank of Commerce**

**Safdarjung Enclave, New Delhi – 110029**

**R/o AD-42 C, Shalimar Bagh, New Delhi**

**4. Satish Kumar Khanna**

**S/o Late Sh. S.D. Khanna**

**The then DGM, Oriental Bank of Commerce, New Delhi – 110029**

**R/o Flat no. 36 N, Riviera Apartments**

**Mall Road, Delhi**

**5. J.K. Katyal**

**S/o Sh. C.D. Katyal**

**The then Sr. Manager, Safdarjung Enclave Branch**

**Oriental Bank of Commerce, New Delhi**

**R/o C-1/D, Vatika Apartments,**

**Maya Puri, New Delhi - 110064**

**Date of Institution: 27.09.2003**

**Date of Conclusion of Arguments :25.05.2018**

**Date of Judgment : 31.05.2018**

**Appearances :**

Mr.Navin Giri, Ld. PP for CBI

All the accused on bail.

Counsel Sh. G.C. Tyagi and Sh. Hrishikesh Baruah for A-1 & A-2.

Counsel Sh. Vikas Arora, for A-3 & A-5.

Counsel Sh. Manish Makhija for A-4

## **JUDGMENT**

1. Instant case was registered on 24.04.2002 in EOW-I Branch on the basis of a complaint received from Sh. A.K. Mishra, CVO, OBC, New Delhi. In terms of allegations, A-1 O.P. Aggarwal , Managing Director of M/s Delhi Petroleum Product Co. Ltd. , New Delhi ( DPPCL) availed regular and adhoc CC facilities from OBC, Safdarjung Enclave Branch, New Delhi which was recommended by A-3 D.K. Bhaskar, Sr. Branch Manager and sanctioned by A-4 Sh. S.K. Khanna, DGM, Regional Office, OBC, New Delhi during the period 1997-1998 for trading into SKO (Superior Kerosene Oil). The said facilities were mis-used by A-1 O.P. Aggarwal who did not plough back the sale proceeds, which led the CC account to become bad and thereby O.P. Aggarwal, caused wrongful loss to the tune of Rs. 444.85 lacs (including interest as calculated on 31.12.2001) to be bank.

2. During investigation, it was revealed that O.P. Aggarwal had submitted an application for grant of cash credit (CC) limit to the tune of Rs. 159 lacs including bill discounting facility of Rs. 20 lacs. On receipt of this application, D.K. Bhaskar, the then Sr. Manager, Oriental Bank of Commerce, Safdarjung Enclave Branch, made a recommendation to Regional office, OBC on 20.2.1997 for grant of CC limit of Rs. 125 lacs including bill/cheque discounting facility of Rs. 15 lacs in favour of M/s

DPPCL, New Delhi against hypothecation of stocks of SKO lying at Kandla Port held by IOC on behalf of M/s DPPCL. However, D.K. Bhaskar did not conduct any pre-sanction appraisal of the stock of the party nor did he do anything to assess the credibility of the party before making recommendation to RO as per provisions stipulated in the booklet of “Discretionary Powers of Loans and Advances” which makes it obligatory on the part of branch to do so. Sh. Gulshan Narang, the loan officer of the bank made a categorical statement to CBI that no pre-sanction appraisal was done in the case and in fact, the process note sent by the branch while recommending for sanction of CC limit of Rs. 125 lacs to RO, OBC, New Delhi was left totally blank by Sh. D.K. Bhaskar.

3. Regional office sanctioned CC limit of Rs. 90 lacs including cheque discounting facility of Rs. 10 lacs in favour of M/s DPPCL on 2.4.1997. The sanction order dated 31.3.1997 containing several conditions was sent to the branch for compliance, wherein one of the conditions was that Sh. Bhaskar had to release the CC facility only when lien on the SKO stocks held by M/s DPPCL with IOC terminal is marked. But, Sh. Bhaskar released the facility to borrower by issuing a DD in favour of IOC on 15.4.1997 itself when no charge was created by the bank over the stock of SKO held by M/s DPPCL with IOC and in fact, Sh. Bhaskar had made no communication to the IOC for creating charge. It also transpired that the branch wrote to the IOC for the first time on 17.4.1997 followed by reminder on 25.4.1997 but IOC vide its

letter dated 7.5.1997 expressed its inability in accepting charge of the bank over the stock of SKO held by the borrower (i.e. DPPCL). Despite this, Sh. Bhaskar released the facility to borrower for the second time by releasing Rs. 82 lacs on 20.5.1997 without getting the sanction condition amended. These acts on the part of Sh. Bhaskar were to show favour to accused O.P. Aggarwal of M/s DPPCL.

**4.** Sh. J.K. Katyal was transferred to OBC, Safdarjung Enclave Branch, New Delhi as Senior Manager and he worked there alongwith Sh. Bhaskar in the month of June 1998 when O.P. Aggarwal again submitted a request on 22.6.1998 for grant of adhoc CC limit for Rs. 160 lacs enhancing the existing limit to Rs. 250 lacs. On 26.6.1998 Sh. J.K. Katyal recommended for the sanction of the enhancement of limit to Rs. 250 lacs on adhoc basis. It was sanctioned by Sh. S.K. Khanna, DGM, OBC on 27.6.1998 and the facility was also released on the same day. Investigation disclosed that the hasty action was taken by the branch Manager and DGM in this case as the whole process right from recommendation to sanction and release of facility was completed within two days only. It also transpired that Sh. S.K. Khanna used his power in full to give maximum CC benefit to the party.

**5.** Investigation further revealed that a letter dated 14.2.1998 was sent by Safdarjung Enclave branch, New Delhi to Regional Office, OBC, New Delhi by Sh. D.K. Bhaskar, seeking permission to allow M/s DPPCL to store its SKO stock with private stockists. Sh. S.K. Khanna had given permission

to this effect vide his letter dated 9.3.1998. But subsequently neither Sh. S.K. Khanna, DGM nor Sh. D.K. Bhaskar, Branch Manager ensured creation of Bank's charge over the stock of SKO of M/s DPPCL held by the private stockist.

6. Investigation further revealed that neither Sh. J.K Katyal, Sr. Branch Manager mentioned in his recommendation letter dated 26.6.1998 about creating bank's charge over the stock of SKO held by the party with IOC or with the private stockists nor Sh. S.K. Khanna put the condition for creating the bank's charge over the stock of SKO with them. It goes without saying that creating of Bank's charge over the stock is only mechanism available with the bank to effectively keep its control over the stock under its charge and non creating of the same was a deliberate act by the accused officials which facilitated accused O.P. Aggarwal to remove the stocks from the stockists, so much so that when J.K. Katyal made inspection of the borrower's stock at FOCT, Kandla , on 21.12.1998, he found a paltry SKO stock of only 12.5 MT of the party worth Rs. 1 lacs only. Sh. H.K. Notani, Vice President of FOCT stated that he received no communication from OBC, Safdarjung Enclave, New Delhi for creating Bank's charge over the stock of SKO held by DPPCL with them . Similarly, Sh. S.O. Malhotra, Vice President (Marketing and Development) of M/s Aegis Logistics Ltd. , Mumbai also replied that their office received no request from the bank to this effect.

7. Investigation also disclosed that Sh. D.K. Bhaskar also countersigned an indemnity letter dated 14.3.1998 submitted by Sh. O.P. Aggarwal, by writing word CTC and affixing his signature thereupon with the bank's rubber stamp and delivered the same to Sh. O.P. Aggarwal on the basis of which he collected the shipment from Budge Port Kolkata which was dispatched by M/s Wilson Impex Ltd. , Singapore. The shipment was delivered by the shipper under the impression that the bank had issued indemnity bond when it was actually not so. This instance ultimately led to arrest of the ship at Singapore, besides exposing the OBC to face legal embarrassment. Witnesses namely Sh. Shailender Shukla and Ajay Kumar Jindal who dealt with overseas matters relating to foreign exchange in OBC, Panchkuian Road, Overseas Branch, New Delhi have stated to CBI that Sh. Bhaskar had nothing to do with these matters, being incharge of OBC, Safdarjung Branch, New Delhi as he was not at all authorized to issue such type of indemnity letter. This instance proves the fact that Sh. Bhaskar wanted to help O.P. Aggarwal in getting consignment released without payment. This action of accused Bhaskar tantamounts to showing undue favour to O.P. Aggarwal.

8. Investigation further revealed that Sh. O.P. Aggarwal conducted his CC Account satisfactorily since inception, which aroused confidence in Bank towards the company. But as soon as it was sanctioned the maximum CC limit of Rs. 250 lacs in June 1998 by Sh. S.K. Khanna, DGM on the

recommendation of Sh. J.K. Katyal, Sh. O.P. Aggarwal came to exhibit his true colour and the decay of his CC Account started. Investigation revealed that he continued to trade in SKO but did not deposit the sale proceeds in OBC, Safdarjung Enclave Branch, new Delhi, wherefrom it had availed CC facility. During investigation, it was found that an OD Account no. 110216 of M/s DPPCL in Karol Bagh Branch, Bank of Punjab, New Delhi was opened in 1996. This account was lying dormant since then but it was activated by O.P. Aggarwal , M.D. M/s DPPCL in December 1998 and early 1999 for the purpose of his SKO related transactions, after the company's CC account in OBC became bad in December 1998. Investigation had disclosed that similarly O.P. Aggarwal opened a current Account no. 1105393 in name of M/s DPPCL in the Green Park Extension Branch, Bank of Punjab, New Delhi on 3.2.1999. The scrutiny of statement of these accounts has disclosed that amount worth crores of rupees was credited in the two accounts including sum of Rs. 42,88,648/- given by PEC, Govt. of India Undertaking to M/s DPPCL on account of settlement of dues in respect of SKO trade undertaken by it with the company. Similarly scrutiny of the two accounts had also revealed that amount worth several lacs of rupees had also been debited from the two accounts in respect of SKO trade undertaken by the company. O.P. Aggarwal deliberately concealed all these transactions from OBC, Safdarjung Enclave, new Delhi.

**9.** Further, O.P. Aggarwal opened another current account no., 1493 in



the name of his sister concern M/s Delhi PetroChem Ltd. in Green Park Extension Branch, PNB, New Delhi on 18.3.1999. Investigation also disclosed that M/s H.V. Exports, NDSE , Part-II, New Delhi of Sh. S.P. Sachdeva gave financial help to the tune of Rs. 40 lacs on 25.2.1999 vide a pay order issued through Indusland Bank, Nehru Place, New Delhi and DEPB (Duty Exemption Pass Book) worth Rs. 52,76,936/- to O.P. Aggarwal of DPPCL, New Delhi for obtaining customs duty exemption. Scrutiny of statement of C/A no. 1493 disclosed that O.P. Aggarwal returned the amount vide five pay orders and one cheque worth Rs. 60 lacs, drawn on this account during April 1999. This is another instance of concealing the information regarding trade of SKO by O.P. Aggarwal through some other bank account instead of CC account of OBC. The dishonest intention of O.P. Aggarwal of M/s DPPCL becomes clear by the facts that he had sufficient funds for payment of Rs. 60 lacs to M/s H.V. Exports during April, 1999 but he deliberately chose not to return the money to OBC where its Account had become bad in December 1998.

**10.** Thus, as alleged, accused O. P. Aggarwal, M.D. M/s DPPCL clandestinely conducted his SKO trading business through his above said accounts in Bank of Punjab and PNB but did not deposit the sale proceeds in CC A/c No. 92, Safdarjung Enclave, OBC, New Delhi because of which, the a/c turned bad and in the process, OBC was caused wrongful loss to the tune of Rs.444.85 lakhs (Rs.250 CC benefit + interest) as calculated on

31.12.2001.

**11.** Investigation revealed that during the tenure of Sh. D. K. Bhaskar six accounts mentioned below were opened on the introduction of Sh. O. P. Aggarwal, though they did not have their firms/company in Delhi and which invariably contained business address of the place where the DPPCL had its company or the address of its employees or associates. A total of 14 cheques were discounted, 13 in these 6 accounts and one for Rs.70,10,905/- in CC accounts of DPPCL during the relevant period. Out of these 14 cheques, 12 were discounted by Sh. D. K. Bhaskar and 2 by Sh. J. K. Katyal with the written permission of Sh. S. K. Khanna, DGM, OBC, New Delhi.

**12.** In all these accounts 14 cheques of accommodation nature issued by M/s Ashirwad Traders, M/s Cont Freight Carriers from Corporation Bank, Gandhidham and M/s Finesse Impex Ltd. From SBI, Gandhidham were purchased by Sh. D. K. Bhaskar with permission of Sh. S. K. Khanna, DGM, OBC, Regional Office, Karolbagh, New Delhi. Sh. D. K. Bhaskar, in connivance with Sh. S. K. Khanna allowed discounting of cheques in the abovesaid six accounts without any written/oral request made by them and cheque amounts so credited were instantly transferred in CC A/c 92 of M/s DPPCL held by Sh. O. P. Aggarwal. The A/c holders of the above accounts have been examined and they stated that they opened their accounts on the instruction/introduction of Sh. O. P. Aggarwal and the blank cheques duly signed by them were also given to him on his demand. Such cheques were

used by Sh. Aggarwal for transfer of the amount from their Account to DPPCL A/c without their knowledge. Investigation has disclosed that Sh. Bhaskar being I/C of the Branch was authorised to allow purchase of cheques only worth Rs.7.50 lakhs, but in all these cases the cheque amount being much higher than his power, he made recommendation to Sh. S. K. Khanna, DGM, RO and Sh. Khanna gave permission in all the cases without any hitch.

**13.** Investigation further disclosed that J. K. Katyal, Sr. Branch Manager also allowed purchase of two accommodation nature cheques for a total amount of about Rs.31 lakhs in the A/c of Raj Trading Corporation and Raj Translinks Pvt. Ltd. (MD Sh. Ravi Kariya) with the permission of S. K. Khanna, DGM. The purchase proceeds were again instantly transferred in the CC A/c No. 92 of Sh. O. P. Aggarwal. Sh. Ravi Kariya expressed ignorance about the purchase of cheques and subsequent transfer of money.

**14.** Investigation has also revealed that both Sh. D. K. Bhaskar and Sh. J. K. Katyal asked their counterpart Sh. Rakesh Sharma, Manager, OBC, Gandhidham to withhold such discounted cheques from presentation in clearing at Gandhidham so that funds could be arranged by the party, i.e., DPPCL and it transpired that they were cleared for payment when the pay orders were issued by Sh. Rakesh Sharma, OBC, Gandhidham from DPPCL A/c in favour of the drawers A/c on receipt of money from the borrower. Sh. Rakesh Sharma has stated this fact in very clear terms that he withheld

cheques from presentation on the requests of Sh. D. K. Bhaskar and Sh. J. K. Katyal. In this process, delay ranging between 16 to 89 days occurred in getting back the remittance against the discounted outstation cheques where as per bank's circular such cheques should be paid within a period of 14 days maximum.

**15.** Investigation had disclosed that an amount of Rs.3,94,94,531.90 was credited in the CC A/c No. 92 of M/s DPPCL in OBC, Safdarjung Enclave Branch, New Delhi by discounting all 14 cheques of various amounts. This enabled the party to avail credit facility to the tune of Rs.3,94,94,531.90 for a period ranging from 16 to 89 days without having to offer any security. The mechanism of discounting cheques of accommodation nature adopted by Sh. O. P. Aggarwal in connivance with Sh. D. K. Bhaskar and J. K. Katyal and Sh. S. K. Khanna also exposed the Bank funds to unnecessary risk.

**16.** Thereby, O. P. Aggarwal, his company M/s DPPCL, Sh. D. K. Bhaskar, Sr. Manager, J. K. Katyal, Sr. Manager and S. K. Khanna, DGM committed offences relating to conspiracy and cheating and since the bank officials had shown undue favour to O. P. Aggarwal, M.D. M/s DPPCL, New Delhi in matters of grant of CC limit in violation of conditions of sanction and allowed purchase of 3<sup>rd</sup> party cheques worth Rs.394.94 lakhs of rupees in utter disregard of banking rules and norms, and therefore, committed offence u/s 120B r/w 420 IPC and 13 (2) r/w 13 (1) (d) of PC Act 1988 and further substantive offences thereunder.

**17.** Charge u/s 120-B r/w sec. 420 IPC and sec. 13 (2) r/w sec. 13 (1) (d) of PC Act was framed against all the accused persons. Charge u/s 13 (2) r/w sec. 13 (1) (d) of PC Act was also framed against A-3 to A-5, besides framing of charge u/s 420 IPC against A-1 and A-2. All the accused pleaded not guilty and claimed trial.

**18.** Prosecution in support of its case, examined following witnesses:-

**19.** **PW1** is Sh. Raghuvir Singh, Peon from Oriental Bank of Commerce, Safdarjung Enclave, who identified signatures of Ms. Inder Pal Kaur on entries Ex. PW1/A, Ex. PW1/A2, Ex. PW1/A-3 and Ex. PW1/A-4 respectively on the dispatch register of bank.

**20.** **PW2** is Sh. S.C. Gupta from Oriental Bank of Commerce, who granted sanction for prosecution of accused J.K. Katyal and proved the sanction order as Ex. PW2/A.

**21.** **PW3** is Sh. B.D. Narang from Oriental Bank of Commerce who granted sanction for prosecution of accused S.K. Khanna and proved the sanction order as Ex. PW3/A.

**22.** **PW4** is Sh. Jagdish Prasad from Regional office of Oriental Bank of Commerce who had processed the loan proposal of M/s DPPCL and deposed about the procedure relating to processing and sanctioning of loans.

**23.** **PW5** is Sh. Subhash Chander Madan who was posted as Chief Manager in Inspection and Control Department of OBC and exhibited the

entry relating to inspection register as Ex. PW5/1.

**24.** **PW6** is Sh. V.N. Pathak, who was posted as Senior Manager in Central Bank of India, Janpath Branch during May 1999 to November 2003 and handed over certain documents alongwith cheque Ex. PW6/B to the IO vide seizure memo Ex. PW6/A.

**25.** **PW7** is Mr. Mukesh Mahindra, Chief Manager (Vigilance) from OBC who exhibited the resolution qua discretionary powers relating to loan and advances w.e.f. 7.11.1997 as Ex. PW7/A.

**26.** **PW8** is Sh. S.P. Sachdeva who was doing the business of garments exports in name and style of M/s H.V. Exports.

**27.** **PW9** is Sh. Gurdeep Singh who handed over some documents to CBI vide seizure memo Ex. PW9/A.

**28.** **PW10** is Sh. Ilyas Ahmed who was working as Computer Operator with M/s DPPCL from 1996 to 1999.

**29.** **PW11** is Sh. N.K. Grover who was posted in Oriental Bank of Commerce during the relevant period and handed over the documents to CBI vide seizure memo Ex. PW11/A.

**30.** **PW12** is Sh. Ramesh Chand Gilani who was working as Dy. Finance Manager in Projects and Equipments Corporation of India Ltd. and exhibited letters dated 29.11.2002 and 12.03.2003 alongwith enclosures as Ex. PW12/A and Ex. PW12/B, besides exhibiting various cheques as Ex.

PW12/B-2 to Ex. PW12/B-8.

**31.** **PW13** is Sh. Inder Deep Singh who had handed over relevant documents to CBI vide Ex. PW13/A and Ex. PW13/C.

**32.** **PW14** is Sh. Prakash K. Shah who was posted as IInd Line Manager in Corporation Bank, Gandhi Dham Branch and **PW15** is Sh. C. Subba Reddy from Corporation Bank, Gandhidham Branch, who exhibited production cum seizure memo dated 23.10.2002 as Ex. PW14/A, besides exhibiting some cheques and entries pertaining to statement of account no. 587 of M/s Ashirwad Traders for different periods.

**33.** **PW16** is Sh. Dinesh Kumar Singh who was posted as Assistant Accountant in M/s DPPCL w.e.f. 1994 to 2002 and exhibited pay-in-slips dated 5.1.1998, 23.4.1998, 26.5.1998 alongwith cheques of different dates and amount.

**34.** **PW17** is Sh. Girish Nayak who was posted as Manager (Foreign Exchange) in Gandhi Dham branch of Oriental Bank of Commerce and exhibited the relevant entries of Bill Collection Register as Ex. PW17/A and seizure memo dated 21.7.2003 as Ex. PW17/A-1.

**35.** **PW18** is Smt. Bimla Rani, landlady of the house where accused Om Prakash Aggarwal remained as tenant in year 1991 and exhibited the account opening form pertaining to account no. 1571 as Ex, PW18/A.

**36.** **PW19** is Sh. Vinay Kumar Thakur who had been engaged in looking

after the import business of M/s H.V. Exports, South Ex-II, New Delhi. As deposed, he had introduced Sh. S.P. Sachdeva to accused O.P. Aggarwal and Sh. S.P. Sachdeva had helped accused O.P. Aggarwal in matter related to Kandla Port by providing Duty Exemption Passbook.

**37. PW20** is Ravinder Mohan Anand who remained posted in CIG Group of State Bank of India, Barakhamba Road Branch as Dy. Manager w.e.f. October 1999 to July 2004 and handed over cheques Ex. PW20/A-1 and A-2 to IO vide seizure memo Ex. PW20/A.

**38. PW21** is Gopal Devnani from Punjab National Bank who also handed over some documents to CBI vide seizure memo dated 4.6.2003 Ex. PW21/A.

**39. PW22** is Sh. S.K. Jain, who worked as non-working Director in the company of accused O.P. Aggarwal who identified his signatures on Resolution of Board of Directors Ex. PW22/A . He further exhibited the resolution dated 20.1.1997 as Ex. PW22/B alongwith balance sheet, profit and loss account for the year 31.3.1997, etc. as Ex. PW22/C (Colly).

**40. PW23** is Sh. Rajiv Khanna, son of Smt. Nischinta Khanna i.e. the owner of property bearing no. A-61, Nizamuddin East, Delhi , who identified the signatures of her mother on certified copy of lease deed Ex. PW23/A.

**41. PW24** is Ms. Shashi Malhotra who was posted as Clerk in Oriental Bank of Commerce and deposed regarding the cheque discounting facility.



**42.** PW25 is Sh. Kavinder Sharma who was working with PEC Ltd. in year 1997 and exhibited letter dated 29.11.2001 alongwith annexures as Ex. PW12/A and Ex. PW25/A . He further exhibited letter dated 18.8.1998, 28.11.1998, 1.12.1998, 24.11.1998, 25.5.1998, 30.06.1998, 13.05.1998, 7.5.1998, 07.07.1998 and photocopies of agreements dated 7.7.1998 and 24.12.1998 as Ex. PW25/B to Ex. PW25/R respectively.

**43.** PW26 is Sh. R.K. Aggarwal, who was working as Accountant and Administrative Officer in M/s H.V. Exports since year 1989 who is a witness to issuance of Duty Exemption Pass Book to O.P. Aggarwal by Sh. S.P. Sachdeva, Proprietor of M/s H.V. Export and exhibited the pay order dated 25.2.1999 in favour of M/s DPPCL as Mark PW26/PX.

**44.** PW27 is Sh. Ajay Kishore Jindal from Oriental Bank of Commerce who during the relevant period was posted in import section of OBC and deposed with regard to the process and transactions relating to foreign exchange.

**45.** PW28 is Sh. Suresh Chander Sharma from Oriental Bank of Commerce who accorded sanction for prosecution of accused D.K. Bhaskar and proved the sanction order as Ex. PW28/A.

**46.** PW29 is Sh. S.K. Gauba who was posted as Manager in Safdarjung Enclave Branch and handed over some documents to CBI .

**47.** PW30 is Sh. Nand Kishore Saraf who in year 2000 was working as

Manager Accounts in M/s Yasheka Impex Pvt. Ltd. and identified signatures of Sh. J.P. Khemka on letter dated 25.3.2003 and ledger account, collectively Ex. PW30/A . He further exhibited seven DDs in favour of Yasheka Impex Pvt. Ltd. as Ex. PW30/B1 to B-7 respectively.

**48. PW31** is Sh. V. Subramanyam who during his employment with Indusland Bank, on the requisition of CBI, had handed over certain documents to CBI.

**49. PW32** is Sh. Shyam Sunder S. Sawant who was posted in Corporation Bank and is a witness to handing over of some documents to CBI from office record.

**50. PW33** is Sh. Marghub Alam, Director of M/s Alemco India Pvt. Ltd. which company was maintaining its account with Oriental Bank of Commerce and PW33 had handed over certain documents to CBI on their asking.

**51. PW34** is Sh. Avtar Singh, who had been running a shop under the name and style of Gift Emporium at Gaffar Market, New Delhi and had handed over documents Ex. PW34/B1 to B7 to CBI vide letter Ex. PW34/A . He identified the signatures of Gurmeet Singh on cheque Ex. PW34/C, besides identifying his signatures at point A on cheques Ex. PW34/D and Ex. PW34/E.

**52. PW35** is Sh. A.K. Mishra who was working as Chief Vigilance Officer, Oriental Bank of Commerce and lodged the complaint Ex. PW35/A

with Superintendent of Police, Economic Offences Wing, CBI.

**53. PW36** is Sh. Sudhir Kumar Ladha who exhibited the current account opening form of account no. 2550 in name of Esskay Traders as Ex. PW18/A3 and another account opening form of account no. 2551 in name of Patel Traders as Ex. PW18/A6. He further exhibited his statement recorded u/s 164 Cr.P.C. by Ld. MM as Ex. PW36/D.

**54. PW37** is Sh. Shailesh Patel who, as deposed, did business with OP Aggarwal in year 1996-1997 regarding import of kerosene oil and identified his signatures on account opening form Ex. PW18/A6.

**55. PW38** is Sh. R. Madhava who was working as Sr. Manager (Vigilance) in Corporation Bank, Zonal Office and handed over documents to CBI vide Ex. PW38/A to Ex. PW38/C.

**56. PW39** is Sh. Anil Sahi who was working as Assistant General Manager Oriental Bank of Commerce and conducted investigation regarding irregularities in respect of accounts of A-1 vide his report Ex. PW39/A.

**57. PW40** is Sh. C.M. Khurana from Oriental Bank of Commerce who during the relevant period was looking after the issues relating to policy matter, appraisal, sanctioning of credit proposals, credit monitoring and follow up and deposed about the procedure for appraisal of cash credit limits and cheque discounting etc. to a borrower.

**58. PW41** is Ajay Gupta, whose company used to purchase Superior

Kerosene Oil from M/s DPPCL . He exhibited the certified copy of statement of account of M/s DPPCL for the period 1.4.1998 to 31.3.99 as Ex. PW41/A. He identified the signatures of Sh. Deepak Jain, Director of his company, on cheques Ex. PW40/B and Ex. PW40/C and further exhibited another cheque dated 23.4.1998 signed by Sh. Deepak Jain as Ex. PW41/B.

**59. PW42** is Sh. Anjan Kumar Bose who joined IOC, Mumbai as Assistant Sales Engineer in 1969 and supplied some documents to CBI vide his letter Ex. PW42/A. He further exhibited the true copy of agreement dated 25.1.1995, 1.4.1996 and 01.04.1997 between Indian Oil Corporation and Delhi Petroleum Products Co. Ltd. as Ex. PW42/B, Ex. PW42/C and Ex. PW42/D respectively, besides exhibiting the gazette notification on Kerosene (Restriction on Use and Fixation of Ceiling Price) order 1993, as Ex. PW42/E and Ex. PW42/F and letter from Oriental Bank of Commerce dated 25.4.1997 as well as its reply as Ex. PW42/G and Ex. PW42/H respectively.

**60. PW43** is Sh. Vikram Kochar who in June 2002 was posted as Dy. General Manager, Regional Inspectorate, at Oriental Bank of Commerce, Mumbai and narrated about the procedure for sanction of limits to customers, besides exhibiting the application dated 25.1.1997 of Delhi Petroleum Products Ltd. , letter dated 24.5.1997 of Regional Office, letter dated 4.4.1997 and 31.7.1997 of Bank as well as letter dated 22.3.1997 of customer, as Ex. PW43/A, Ex.PW43/B, Ex. PW43/C, Ex.PW43/E and Ex.PW43/D respectively.

**61.** PW44 is Sh. Pradeep Kumar Gupta, PW45 is Sh. Gulshan Narang, and PW49 is Sh. Gulshan Kuma Dhawan who were looking after the affairs of Loan Department of Oriental Bank of Commerce either at Safdarjung Enclave Branch, regional office and head office and stated about the procedure of sanctioning term loan, CC Limit and other limits to customers.

**62.** PW46 is Sh. Rajesh Sharma who was looking after the affairs of loan department of Oriental Bank of Commerce, Safdarjung Enclave and supplied the account related documents of M/s DPPCL to CBI vide his letter Ex. PW46/A , besides handing over other relevant documents like details of cheques, copy of bill purchase register, bank statement etc. to CBI.

**63.** PW47 is Sh. Deepak Kumar Manuja who was posted as Branch Manager in Bank of Punjab Limited during the year 2003 and handed over certain documents pertaining to M/s DPPCL to CBI. He further identified the signatures of Sh. Y.S. Pawan Kumar, on seizure memo Ex. PW47/B.

**64.** PW48 is Sh. Pawan Prakash who exhibited the letter dated 20.05.2003 as Ex. PW48/B vide which certain documents were supplied to CBI from bank's record.

**65.** PW50 is Sh. Jayawant S. Rasalkar from State Bank of India who stated about some documents having been handed over from record of State Bank of India to CBI.

**66.** PW51 is Sh. Harish K. Notani who had been Vice – President of

Friends Group of Companies since 1996 and narrated about the procedure of unloading of vessel and provided certain documents to CBI alongwith the bill of entry and rent charges received by M/s DPPCL .

**67. PW52** is Sh. Jagdish Prasad Prajapati who during the relevant year was posted as Senior Manager in Oriental Bank of Commerce , Gandhidham Branch and exhibited the letters/seizure memos as Ex. PW52/A (colly) to Ex. PW52 /C (colly) vide which relevant documents were handed over to CBI .

**68. PW53** is Sh. Shailendra Shukla who was posted in Overseas branch of Oriental bank of Commerce during the relevant period and deposed with respect to the functioning of foreign exchange business in bank.

**69. PW54** is Sh. Ajit Singh Chadha who used to do the valuation of the properties requested by the private parties as well as banks and exhibited the valuation reports of various properties of A-1 prepared by Mr. T.K. Chatterjee, Registered Valuer.

**70. PW55** is Sh. Rakesh Kumar Dhawan who was working as Part Time Legal Retainer in Oriental Bank of Commerce and had given legal opinion Ex. PW55/A regarding encumbrance/non-encumbrance of properties bearing no. A-61, Nizamuddin Extension, New Delhi and J-5/157, Rajauri Garden, New Delhi.

**71. PW56** is Sh. Awadhesh Prasad Shukla and **PW57** is Sh. Ashok Upadhyay, who both are witnesses to obtaining of specimen

signatures/handwriting of Mr. Sudhir Laddha by CBI.

**72. PW58** is Sh. Syed Asif Ali who is a witness to obtaining of specimen signatures of A-2 D.K. Bhaskar.

**73. PW59** is Sh. S.K. Gupta who is a witness to obtaining of specimen signatures of A-1 and Ilyas Ahmed.

**74. PW60** is Sh. Sudhir Malhotra who was working in Aegis Logistic Limited and provided certain information to CBI vide letter Ex. PW60/A.

**75. PW61** is Sh. Rakesh Sharma who was posted as Manager in Branch Office Gandhidham, Oriental Bank of Commerce and deposed regarding the process of bank for deposition and clearance of cheques and other such instruments.

**76. PW62** is Sh. Ravi Kishore Karia who exhibited the Account Opening Form bearing no. 2465 and 2466 as Ex. PW18/A-1 and Ex. PW18/A-2 respectively which were opened in the name of Raj Carrying Corporation and Raj Translink Pvt. Ltd. and were introduced by accused O.P. Aggarwal.

**77. PW63** is Sh. Gyaneshwar Somani who was working as Chartered Accountant in M/s Venkateshwar Vanijya India Ltd. and exhibited letter dated 11.01.2003 and other documents handed over by his company to CBI as Ex. PW63/A and Ex. PW63/B (Colly).

**78. PW64** is Sh. Anand Meshram from Oriental Bank of Commerce who handed over the relevant documents to CBI from bank's official record vide

receipt dated 30.01.2003.

**79. PW65** is Sh. Anurag Shukla, Senior Manager from Corporation Bank, Gandhidham Branch who proved the letter dated 20.9.2003 Ex. PW65/A of Corporation Bank vide which, it was informed by the branch that cheque no. 298726/- for Rs. 3129843/- pertaining to Confright Carrier CA no. 739 was not traceable after the earthquake on 26.1.2001.

**80. PW66** is Sh. R.P. Kaushal, Additional Superintendent of Police, EOW-I, CBI, Delhi who exhibited the seizure memo dated 4.9.2003 as Ex. PW52/A.

**81. PW67** is Sh. Ghanshyam Sarada, who, as stated, was running the business of jute mill during the relevant time and identified signatures of Sh. Ridh Karan Rakhecha , Director of Venketshwar Vanijya India Ltd. on Ex. PW63/A.

**82. PW68** is Dr. Ravindra Sharma, Assistant Director & Scientist from CFSL who examined the questioned and specimen signatures in question vide report Ex. PW68/B.

**83. PW69** is Sh. Vijay Kumar Aggarwal who was assisting O.P. Aggarwal in business of kerosene oil and identified his signatures as well as signatures of O.P. Aggarwal on account opening form of M/s Vijay Oil Company on Ex. PW18/A-4, besides identifying his signatures on cheque Ex. PW16/A-6 and on document Ex. PW68/6 (colly).



**84.** PW70 Sh. Radha Kant Sharan is IO of the case who conducted investigation of the case and filed charge sheet against all the accused persons.

**Following witnesses were examined in defence by accused persons:-**

**85.** DW1 is Sh. Desh Kumar who stated that he knew A-1 for the last 25 years who had very good reputation in society and the companies being run by A-1 also had good reputation in market.

**86.** DW2 is Sh. Naresh Kumar from Oriental Bank of Commerce who brought the summoned record and exhibited the same as Ex. DW2/A to Ex. DW2/H.

**87.** DW3 is Sh. Ajay Kumar, Record Incharge from Debts Recovery Tribunal who brought the case file of application no. 466/99 titled as Oriental Bank of Commerce Vs. M/s DPPCL & Ors. and exhibited the copy of contents of petition alongwith counter claim as Ex. DW3/A-1 and A-2 (colly).

**88.** DW4 is Sh. S.C. Gupta who during the tenure of his employment with different banks held various positions as Branch Manager, Regional Manager, General Manager, Executive Director and finally retired as CMD from Punjab National Bank. He deposed with respect to the process involved

in taking credit facilities from a bank as well as the guidelines and norms which are to be followed by the bank officials and officers while providing such facilities to borrower.

**89. With respect to accusation against accused persons, following is the discussion:-**

**A-3 did not conduct pre-sanction appraisal and released facilities to A-1 without creation of charge over stock and recommended for enhancement without amendment in sanction conditions and did not make even communication with IOC for creating the charge :-**

**90.** PW4 was posted as Manager in Regional Office of OBC during the relevant period. Loan proposal was processed by him at the regional office which was received from Safdarjung Enclave Branch . In the processing loan CC Hypothecation , limit of Rs. 125 lacs and bills/cheques discounting facility of Rs. 15 lacs, against hypothecation of stocks lying at Kandla, Seapor, held by IOC on behalf of the party and receivables, with equitable mortgage of two properties having market value of Rs. 1.09 Crores and Rs. 25 lacs respectively as collateral security.

**91.** In terms of accusation, Gulshan Narang, the Loan officer of the bank made a categorical statement to CBI that no pre-sanction appraisal was done in the case. The process note sent by the branch while recommending for sanction of CC limit of Rs. 125 lacs to RO was left blank by A-3. Sh. C.M.

Khurana also stated that it was desirable on the part of A-3 to conduct pre-sanction appraisal before making recommendation .

**92.** Contrary to the accusation, Gulshan Narang who was examined as PW45 before the court stated about the disbursement of credit facility to A-2 after obtaining prescribed loan documents and creation of charge over prime security and also obtaining collateral securities in the form of immovable properties. He himself was the loan officer and had scrutinized and processed the loan file of DPPCL. All the collateral securities mortgaged in the bank were found in order. Title deeds of the properties were verified and found to be correct. As per their record, the personal guarantee of the directors of the company was also obtained by the bank. The three years balance sheets, future projections, project report and other documents attached with the loan application were found to be in order by PW45 himself. As also stated by him, the party was having Grade of Parallel Marketing Grade-1 which was considered highly recommended grade for import of goods for SKO and bank generally seek such party for safe financing of the bank funds. From where did the occasion arise for Gulshan Narang making statement regarding no pre-sanction appraisal having been done when he himself was the first step of ladder to endorse the proposal based upon pre-sanction appraisal.

**93.** Other prosecution witnesses also stated about the good credit standing of A-2 at the time of consideration of the loan proposal. The loan

application form was accompanied by all the requisite enclosures, balance sheets, etc. As also stated by prosecution witnesses, before sanction of loan, request for loan and its file passes through three/four officers at the branch level and three/four officers at the regional level. If the power to sanction loan is within the ambit of RO , all the officers at branch level as well as RO level are responsible to examine the loan file and can give their recommendation after scrutinizing the file and they are equally competent to raise queries and also to give recommendation that loan should not be granted to a particular party.

**94.** The processing of loan in the instant matter was done by PW4 at RO level who referred to the certificate from bank of Punjab National Bank wherein DPPCL had been sanctioned CC limit of Rs. 50 lacs and it did not owe anything to bank and there were no dues found against them. He stated that in the matter of DPPCL, the loan proposal was scrutinized by three officers at RO level including himself and none of them found any objection to the processing and recommendation for grant of sanction of CC limit in favour of A-2.

**95.** PW43 who had permitted the sanction of CC limit at first instance also did not find any lack of pre-assessment verification in the loan proposal of A-2. PW39 confirmed that over all rating given to DPPCL by MDRA was '1' valid till 13.11.1997, besides the confirmation from IO himself regarding their being no evidence of irregularity in grant of loan to A-2.

**96.** *The point of controversy remained with regard to ' No Visit ' of unit to inspect stock held at Kandla Seaport and pertaining to non processing of the charge required to be held by IOC.*

**97.** According to PW4, there was no mention about the visit of unit/stock held at Kandla Seaport . It was mentioned in the process note by PW4 that party will import SKO (Superior Kerosene Oil) and SKO will be stored at IOC storage tanks at the port and delivery shall be made from there for dealers/buyers directly. The matter was discussed with the company for creation of charge over stocks and company had informed that they shall approach IOC for creation of charge in favour of bank. The credit facility was also to be secured by equitable mortgage of properties . Branch was conveyed sanction of credit facility in favour of A-2 alongwith the terms and conditions. As per practice, some of the terms and conditions were to be fulfilled before release of advance and some conditions might be complied later within a time frame.

**98.** According to this witness, after release of advance, the branch submits BCC to RO alongwith copy of documents executed by the borrower within 30 days. This witness referred to the letter dated 25.4.1997 Ex. PW2/DC written by OBC, Safdarjung Branch to Chief Commercial Manager, IOC whereby branch had requested for creation of charge over SKO of DPPCL. Branch had already written to regional office that the matter had been taken up for creation of charge with IOC but IOC later on refused

to create any charge which was conveyed by IOC to Bank Manager vide letter dated 7.5.1997. According to this witness, creation of charge was not specifically mentioned in the sanction letter and it was not a pre condition.

**99.** PW2 at the same time, referred to the condition mentioned in sanction dated 31.3.1997 that the letter from IOC shall be obtained certifying therein that stocks lying in their possession shall be charged to OBC and SKO shall be released to the party upon instructions of the bank. This witness also referred to the letter from IOC regarding their inability to create charge on the stocks of SKO. Branch then informed to Assistant General manager, Regional office regarding the inability of IOC vide letter Ex.PW2/DD. This witness admitted that in case of CC Hypothecation Limit, the charge and the lien of the bank on the stocks is created by means of HYP Agreement and the word 'Lien' is not mentioned in the terms and conditions of the sanction dated 31.3.1997. Requirement for obtaining the letter from IOC was mentioned in clause 16 and as per clause no.8 of the sanction, “ All usual terms and conditions applicable to such advances shall be complied with”. He stated that in this sanction, additional condition no.16 was not mentioned to be complied with by the branch. He admitted that it was the practice that after disbursal of the advances in compliance to the terms and conditions of the sanction, the branch sends a branch compliance certificate to the Regional office which is duly vetted by the Legal Retainer of the Regional Office. According to him, the branch would have sent Branch

Compliance Certificate after disbursal as per the terms and conditions of the sanction which had been duly vetted by Sh. R.K. Dhawan, Advocate, the legal Retainer of the bank.

**100.** Prosecution heavily relied upon statement of PW3 who stated that A-4 had given the sanction without complying with the conditions that charge is to be created upon the goods in favour of the bank while also stating that there are circulars and guidelines that lien has to be created on the goods in favour of the bank even in cash credit hypothecation limit. However, Any such circular or guidelines referred by PW3 were not produced on record. PW3 also stated that hypothecation agreement itself contains such condition . After going through the hypothecation agreement, he stated that it was by and large standard document and there was condition imposed by A-4 in the sanction order itself that margin of 25% shall be maintained in respect of the hypothecation limit.

**101.** This witness was the sanctioning authority for A-4 who had sanctioned for prosecution against A-4. He stated that he had relied upon the SP report according to which, no pre inspection had been carried out , so it could not be said whether the stocks were available or not. This witness at the same time, had not even gone through the hypothecation agreement concerning this case prior to grant of sanction as stated by him, therefore he was not in position to say whether it was properly executed or not. He stated that all pre-sanction processes are the responsibility of the Branch manager

and he had not personally examined whether the equitable mortgage property/securities pledged with the bank in this case was sufficient or not. He reiterated that A-4 despite having known the refusal from IOC released the amount.

**102.** Albeit, PW4 demolished the charge qua non conducting of pre sanction visit for the purpose of verification of stock. There was no mention about visit of unit/stock held at kandla Seaport in the process note and according to him, the visit was required to the office of the party and not to the unit because there was no question for verification of stock as it was yet to be imported. He reconfirmed that there was no requirement of physical verification of stock at Kandla Port as the stock was yet to be purchased with the loan amount.

**103.** Prosecution witnesses themselves confirmed that there was no question of checking of the stocks before disbursement of the limit/amount. Since the borrower had sought loan for purchasing SKO and had informed that the goods would come only after the payment would be released by the bank in advance, as such, there was no occasion for branch head/Loan Officer to visit for the purpose of verification of stock before disbursement of loan amount.

**104.** Question was put to PW4 regarding non requirement of writing any letter to IOC for creation of charge over the bank as the stock was yet to be purchased, to which he clarified that after deliberation with the branch and



the party at RO level, borrower had stated that he shall obtain letter from IOC for charge upon stock and thereafter it was decided to put the condition for obtaining of letter from IOC. Though, he admitted that the loan was fully secured through mortgage of immovable properties and the branch had intimated RO regarding inability of IOC for creation of charge and also had sought advice from RO. Said condition in the sanction of loan was put at the instance of borrower in writing and as such, the matter was to be taken up with borrower for taking up the matter with IOC for NOC. Branch was never advised by RO to stop the operation of account or to stop further disbursement. He answered in negative regarding any rule book or circular of bank making it mandatory to recommend creation of charge on the stocks kept in third parties in godown in case the credit facility is in nature of CC hypothecation .

**105.** It was categorically stated by PW44 that as per the guidelines of the bank, hypothecation agreement for the stock was executed by DPPCL through which bank's charge over the stock was created. As specifically deposed by PW44, in between sanction and disbursement of loan , visit was not necessary as shipment was not received by that time and lien could be created only after the stock had arrived. According to this witness, visit was made after the stock had arrived. Further all the prosecution witnesses stated about the satisfactory accounting and reports with regard to the loan account of M/s DPPCL with the bank based upon which the initial sanction was

permitted followed by the enhancements. Prosecution witnesses themselves in categorical terms stated about the issuance of letters to IOC on the request of the borrower himself, though the creation of charge over the stocks lying with IOC was not mandatory condition.

**106.** PW44 also admitted that term CC signifies that the stock remains in the custody of the borrower but bank's charge is created over the stock by way of execution of hypothecation agreement and the document Ex. PW2/DA in the instant matter was complete in itself and charge was created by this agreement i.e. hypothecation agreement dated 15.4.1997 executed between the bank and borrower i.e. DPPCL and said agreement permitted the borrower to do normal business of sale and purchase of stocks and deposit the sale proceeds in the bank account for which loan had been obtained from the bank. He also admitted that their bank had been providing credit facilities under CC hypothecation in normal course without imposition for creating of charge upon the third party and this was for the first time when this condition was incorporated in writing on asking of borrower himself. He also admitted that the sanction did not incorporate the condition of creation of charge with third party.

**107.** PW42 described the reason for non creation of charge and about the written submission of borrower himself, based upon which the IOC was written letter for creation of charge on the stock. PW42 was the General Manager, Indian Oil Corporation and during the relevant period, he was

posted in Western Regional Office in Bombay. IOC had responded to the letter dated 25.4.1997 issued by OBC vide which bank had requested IOC to create the bank's charge on incoming import parcel to be imported by M/s DPPCL. This request was rejected for the reason that it was not possible to create such charge as kerosene was being given for parallel marketing out of kerosene being imported for the public distribution system and therefore if a charge is created and stock of kerosene gets blocked due to any dispute, the operation of kerosene discharged storage and supply could be disrupted leading to public outcry or disturbance since kerosene was an essential commodity. Further if any tank is blocked, the pipeline operation would be disrupted and there could be delay in discharge of import cargoes leading to huge demurrage.

**108.** According to PW 42, even after the refusal by IOC, bank followed up with IOC through various letters including the letter dated 11.6.1997 which discards the testimony of PW43 regarding their being no correspondence relating to the subject matter after letter dated 22.3.1997, though PW43 himself in cross examination admitted that Ex. PW42/DC was written by the branch to Senior Manager , IOC for creation of lien for the SKO and further vide letter dated 11.6.1997 another letter was written by M/s DPPCL to Senior Manager IOC requesting IOC to honour the letter of the bank for creation of lien in favour of the bank. Same was followed by letter dated 11.6.1997 written by OBC to Senior Manager IOC again

requesting for noting of lien/charge and thereby further admitted that as per the correspondence between bank and M/s DPPCL there was correspondence with IOC for creation of charge/lien and bank was maintaining follow up to ensure the same. This witness at the same time admitted that hypothecation agreement executed between DPPCL and bank was complete in itself and in terms of said agreement, charge on the goods was created in favour of the bank which was complete on the execution of hypothecation agreement Ex. PW2/DA. The abovesaid was besides the mention by this witness regarding the equitable mortgage of two immovable properties having been created in favour of bank having the collective estimated value at that time at Rs. 134.04 lacs.

**109.** PW44 corroborated the deposition of other prosecution witnesses qua the communication from IOC with regard to creation of charge and the follow up as well as repeated reminders and requests made by the branch for creation of charge to IOC. The charge/lien anyways was not created by IOC , however prosecution witnesses themselves in unequivocal terms stated about hypothecation agreement itself being the charge.

**110.** PW44 stressed that no irregularity was committed by A-3 in respect of the release of first installment of loan amount. Though this witness stated that second installment of the loan amount could not have been disbursed until and unless lien is created over the stock. However, in answer to the question whether second installment should have been released in the instant

matter, he stated that it could have been released as sanction was obtained from the Regional office and in between the sanction and disbursement of the loan, personal visit is not necessary as shipment is not received by that time and lien is created only after the stock is received, which was received after the second installment had been released. He also elaborated that the branch had categorically informed the regional office that IOC had declined to mark lien on the stocks of DPPCL and further instructions were also sought from RO. In response to said communication RO had advised to take up the matter with the company i.e. A-2 for doing the needful. Accordingly if regional office desired upon receiving the letter dated 8.5.1997, they could direct the branch to stop the operation in the loan account except credit and to recall the advance . If the loan account is satisfactory and if any of the conditions has not been complied with by the account holder, then it is upto the decision of sanctioning authority at regional level to stop the loan account or to continue with the same. Depending upon the nature of the condition the sanctioning authority at regional office may allow to continue with the account if there is non compliance of any of the conditions, stipulated in the sanction letter.

**111.** Another prosecution witness i.e. PW40 though stated that the branch had initially released the credit facility without the compliance of the condition relating to marking of lien on the goods and the second release should not have been allowed without the compliance of the lien or without

getting the condition changed/waived off from the competent sanctioning authority since terms and conditions of the sanction relating to lien had not been complied with. Further amount should not have been disbursed unless and until the condition was got changed or waived off. Surprisingly this witness was the recommending authority before the sanctioning authority for consideration and approval for allowing temporary enhancement in CC hypothecation limit to Rs. 250 lacs for three months. He himself stated that no adverse comments about the conduct of account or irregularity in relation to documentation nor adverse remarks by inspecting authority were mentioned in the process note put before him which was further recommended by him. The note was prepared by Sh. P. Shridhar, the then Senior Manager at Regional office and he placed his recommendations before the sanctioning authority which was approved by the Regional manager A-4.

**112.** According to PW40, as per the record incorporated in the process note, the account was not irregular as on the date of preparing the process note. Despite his submission that the further installments should not have been released prior to waiver off/amendment in the clause pertaining to lien, he himself admitted that the bank had been granting this facility to number of other borrowers without imposing the condition of creation of lien of stocks and also admitted that the sanctions Ex. PW40/DQ1 to DQ3 are such like sanctions where while granting the facility of CC (Hypothecation) the bank

had not considered it proper to impose the condition of lien on stocks. He also admitted that the discretionary power permits the sanctioning authority to waive/amend any condition as stipulated in the relevant sanction found to be ambiguous, where compliance of the condition as imposed is not possible and the mandate of this power is to discontinue with the irregularities rather than continuing with it. Clause no.16 itself was again not specifically mentioned by this witness in the note which had earlier been stipulated as part of the terms of this sanction and later on this witness retracted while stating that he was not able to say if the second disbursement of loan to M/s DPPCL was as per the rules and norms and standard practice of the bank while admitting that the documents file placed before him for transfer of the credit facility should be complete in all respect. He became evasive by submitting that he did not remember whether the branch had not complied with the condition no. 16 while approving/recommending sanction on 26.6.1998 vide process note Ex. PW2/DN which was bearing his own approval. This was the witness who had himself recommended the credit facility to M/s DPPCL vide his note on Ex. PW2/DN, therefore the responsibility was equal upon him with regard to alleged non compliance of any terms and conditions.

**113.** PW39 was the inquiry officer who had conducted departmental inquiry . He reconfirmed that the condition no.16 as mentioned in Ex. PW43/C and Ex. PW3/DD was not stipulated in sanction letters dated

3.1.1998 Ex. PW44/A-5/DC , 30.3.1998 Ex. PW2/DG and dated 27.6.1998, Ex. PW2/DO. Though this witness was unable to tell whether the said condition was specifically waived off but as stated by him, since it was not stipulated in further sanctions, therefore one can infer that the same was not required now.

**114.** As reiterated by PW39, as per procedure and bank guidelines, it was not mandatory or required on the part of regional office or branch to stipulate the condition of creation of charge or lien over the stock kept with third party or the private party if the nature of the credit facility is cash credit hypothecation. It was also part of the guidelines and within the discretionary power of the sanctioning authority that in case any such superfluous condition had been stipulated in the sanction which cannot be fulfilled then the competent authority was authorized to delete the condition provided all other parameters were duly complied with. This was necessary that there are no regular adverse comments by the inspection department or other inspecting officials to highlight non compliance of such condition. The credit facilities had been secured by collateral security in form of three properties as brought on record. The stock statements were regularly submitted by the borrower and the sale proceeds had been duly deposited by the borrower in the account. The inspection reports, audit reports , monitoring reports and all the officers in the hierarchy processing and recommending the proposal for DPPCL did not find any irregularity or non



compliance of the guidelines by not seeking compliance of the condition which was not possible and was not even mandatory or required.

**115.** The communication with regard to refusal by IOC had duly been conveyed to RO and at the time of subsequent correspondence and the enhancement of the limit also, no such condition was imposed. PW4 admitted that RO had not imposed any such condition in the subsequent sanction dated 3.1.1998 and 30.3.1998 and the sanction letter dated 3.1.1998 Ex. PW44/A5/D6 did not stipulate any condition of marking lien on stocks lying with IOC/ private stockists/third parties.

**116.** So much so, PW70 himself stated that there was no irregularity or non compliance of the rules and guidelines in processing and recommending and the grant of sanction of loan.

**117.** DW4 was examined by the defence qua the said aspect. Though the prosecution witnesses themselves have deposed regarding the said condition being not mandatory or required, the said condition having been imposed only upon the submission of borrower himself, the said condition was not possible to be fulfilled, hence, there was no stipulation with regard to the same in the subsequent sanction letters, thereby the said condition seemingly was waived off or anyways was not part of the further sanctions. DW4 rather reaffirmed the said outcome of deposition of prosecution witnesses while submitting that any stipulation with regard to incorporation of condition of creation of lien with the petroleum company or any other private company in

cash credit hypothecation agreement is irrelevant and unnecessarily creates inspection irregularities and does not serve any meaningful purpose since CC Hypothecation itself creates a valid charge on the stocks financed by the bank.

**118.** This is by now evident on record that the creation of charge from IOC was sought only on the submission of the borrower himself. The sanction was granted for CC hypothecation which signifies that stock remains in the custody of the borrower but bank's charge is created over the stock by way of execution of hypothecation agreement. The document Ex. PW2/DA, in the instant matter, was complete in itself and charge was created with execution of this agreement i.e. hypothecation agreement dated 15.4.1997 executed between the bank and borrower i.e. DPPCL. This agreement permitted the borrower to do normal business of sale and purchase of stocks and deposit the sale proceeds in the bank account for which loan had been obtained from the bank. The bank had been providing credit facilities under CC hypothecation in normal course without imposition of the condition of creation of charge with third parties and documents Ex. PW40/DQ1, Ex. PW40/DQ2 and Ex. PW40/DQ3 pertained to similar sanction for CC hypothecation with the bank and did not incorporate the condition of creation of charge with third parties.

**119.** Prosecution witnesses also admitted regarding the stipulation of clause that “ no ambiguous condition to be stipulated in the sanction ” and

where compliance is not possible , same may be got waived/amended from the sanctioning authority rather than continuing with the irregularity. The condition with regard to the creation of charge/lien by IOC was not possible in terms of specific refusal from IOC, therefore this condition which otherwise was not mandatory for such kind of borrowings, was waived/amended by inference and therefore did not find mention in the subsequent sanctions. The accusation of prosecution thereby stands disproved.

**ADHOC ENHANCEMENTS:-**

**120.** In terms of the prosecution case, A-5 on 26.6.1998 recommended for the sanction of enhancement of limit to Rs. 250 lacs on adhoc basis which was sanctioned by A-4 on 27.6.1998 and the facility was also released on the same date whereby A-4 used his power in full to give maximum CC benefit to the party. Neither A-5 mentioned in his recommendation letter dated 26.6.1998 about creation of bank's charge over the stock of SKO held by the party with IOC or with private stockists nor A-4 put the condition for creating the bank's charge over the stock of SKO with them which facilitated accused O.P. Aggarwal to remove the stocks from the stockists.

**121.** After the initial sanction of CC hypothecation in sum of Rs. 90 lacs, request for enhancement on adhoc basis was received from A-2 for enhancement in CC hypothecation to Rs. 160 lacs for period of three months

alongwith details of additional collateral securities offered by the borrower. The said request was processed and recommended to Regional office vide letter Ex. PW44/A4. The said enhancement was sanctioned vide Ex. PW4/B. Adhoc limit was brought down to original limit of Rs. 90 lacs on 29.10.1997. The limit was again availed on 11.11.1997 and balance as on that date was Rs. 146.97 lacs. The outstanding in the account was Rs 87.08 lacs as on 23.12.1997 which was within the original sanctioned limit.

**122.** The extension of time for availing adhoc limit was in practice in the banking business, as stated by PW4, who had processed the proposal of adhoc facility at Regional office for enhancement in CC limit from Rs. 90 lacs to Rs. 160 lacs and had also recommended for enhancement of CC limit from Rs. 90 lacs to Rs. 250 lacs. This facility i.e. adhoc increase of Rs. 160 lacs was recommended for three months. The collateral security had been properly charged and other documentation formalities had also been completed and had also been examined by Legal Retainer on 24.6.1998. The proposal was received in RO on 26.6.1998 and was sanctioned on 27.6.1998.

**123.** The branch submitted BCC for adhoc CC limit and monitoring officer report for September 1997 in the handwriting of PW 44 P.K. Gupta . Vide this BCC, branch conveyed to RO regarding execution of documents and insurance details etc. but there was no mention of charge with the IOC. Further request was received from A-1 regarding enhancement in sanction

of CC limit from Rs. 90 lacs to Rs. 250 lacs vide Ex. PW4/E. The recommendation for enhancement of CC limit was recommended by the branch and the request was processed by PW44 the loan Manager of the branch. This adhoc facility was also recommended for three months and the recommendation of adhoc limit to Regional office was within the original sanction limit with outstanding reported at Rs. 88.22 lacs, as deposed by PW4. The letter dated 26.6.1998 written by branch to RO did not have any reference for creation of charge over SKO with IOC which fact was already in the knowledge of RO.

**124.** PW45 was the loan officer at Branch level and PW44 was the Senior Manager Loan In charge , both of whom were instrumental in processing the proposal for enhancement at branch level which was placed before A-5 and was recommended to RO. The process note was prepared by Sh. P. Sridhar, Senior Manager at Regional office which was placed before Sh. C.M. Khurana PW40 and was sanctioned by A-4 Regional head. It was mentioned in process note that all the collateral securities had been properly charged and other documentation formalities had also been completed and were also examined by the Legal Retainer at Regional office on 24.6.1998. In answer to the charge regarding processing of the note and release of the payment on same day, it was explained by the prosecution's own witness i.e. PW4 that in case of new borrower, the time taken for sanction of credit limit may take longer but in case of existing customers with satisfactory dealings, the

processing of any enhancement is done on priority in shortest possible time. He also stated that bank normally sanctions adhoc/temporary enhancement of limits to the existing borrowers with satisfactory past dealings, as per requests of borrowers, which are processed as earliest possible and it may be within one and two day . The regional head had power to sanction credit limits of Rs. 2.5 crores to a party on the recommendation of the branch and also bills purchase LC limit over and above this limit of Rs. 2.5 Crores . In the present case, the limits sanctioned to DPPCL were within the powers of the Regional Head.

**125.** Abovesaid was confirmed by inquiry officer PW39 who stated that adhoc sanction means where credit facilities have been sanctioned on regular basis to a borrower and party needs funds urgently to purchase the material where he is looking forward for profitability or higher sales. The borrower approaches the bank for sanction of additional facility for temporary period and the bank normally sanctions adhoc/temporary enhancement/credit facilities to the existing borrower with satisfactory past record, including conduct of the account and achievement of projected sales targets within a day or two or else the whole purpose of providing the facilities would be defeated, though the need based requirement for adhoc limit is to be appraised at the level of the sanctioning authority through a process note.

**126.** PW39 also referred to the process note dated 26.6.1998 PW2/DN recorded at RO for considering temporary enhancement of CC limit from

Rs. 90 lacs to Rs. 250 lacs. On the basis of this letter, branch vide its recommendation Ex. PW2/DM, recommended for consideration of the request of A-2 for temporary enhancement of hypothetical CC limit from Rs. 90 lacs to Rs. 250 lacs for the period of three months as all the collateral securities had been mortgaged to the bank for this as well as its allied concern DPL. According to the recommendation, the conduct of the account was satisfactory and rather in terms of the process note recorded at RO, it was categorically mentioned that the turnover of the company had gone up by 274% in year 1997-1998 as compared to earlier year. Further, it was recorded that the company had already achieved sales of Rs. 10.88 crores from the period 1.4.1998 to 15.5.1998. In terms of the stock statement the value of stock as on 9.6.1998 was Rs. 3,10,88,735/- and value of stock as on 30.6.1998 was Rs. 11,58,44,938/-.

**127.** PW44 who had prepared the process note stated about the satisfactory operation of account by A-2. According to him, stock was sold by the borrower from time to time and credits of the sale were reflected in the statement of account. PW44 also stated that the loan account of A-2 was satisfactorily maintained and was regular. Whenever additional facility was provided to A-2, the file was routed through several bank officers. The Branch Certificate of compliance was sent to regional office regarding sanctioning and documentation of A-2 i.e. M/s DPPCL. For every additional sanction, enhancement and renewal, the BCC was sent. He admitted that the

loan processing officer at branch is to deal with BCC and it was the duty of the loan officer to fill the form of BCC. After filling form of BCC by the loan processing officer, the same was to be placed before the Branch Manager who after scrutinizing the same forwarded to RO. In this matter, BCC was prepared by Sh. Gulshan Narang.

**128.** With regard to the creation of charge with IOC or private stockists, the said point has already been discussed in preceding paras regarding their being no mandate in banking regulations for creation of such charge and the bank charge having been created upon the stock of SKO through hypothecation agreement. The loan was additionally secured with collateral securities in form of immovable properties. The value of collateral securities was more than the loan amount. This witness i.e. PW44 also admitted that all the officers at the regional office who had processed the loan application before putting up before the sanctioning authority are required to go through all the material documents in respect of loan applications and thereafter apply their mind independently before making any recommendation for sanction or rejection of the loan applications .

**129.** PW44 was also the monitoring officer and in terms of his report, the account was running satisfactorily which was reported to the RO as well. According to him, in case any anomaly is observed, same is reported to the RO. Regular inspection of the branch was also carried out by the Inspectors from Inspection and Control Department of the Head Office. Apart from the



other general inspections, the said inspector also inspects the loan transactions and other documentations to ensure that the loans get disbursed as per banking norms and terms of the sanction. No irregularity was observed by the Inspectors in the account of DPPCL during inspections .

**130.** PW2 also stated that it appeared from the statement of account as on 24.2.1998 and 16.03.1998 that the account was showing credit balance, though he did not know that the earlier sanction limits were already adjusted and regularized, however stated that as per the process note, there was mention of the existing collateral security having been properly charged and other documentation formalities had also been completed, which were also examined by the Legal Retainer and on the basis of said recommendations, Regional office vide letter dated 27.6.1998 had sanctioned enhancement of limit from Rs. 90 lacs to Rs. 250 lacs with certain stipulations vide Ex. PW2/DO. The Inspection report dated 05.06.1998 Ex. PW2/DP was also on record and no adverse comment was made in this inspection report. This witness rather confirmed that from the inspection report, it could be seen that the position of stocks lying in Mumbai was physically checked by H.C. Madan, Chief Manager, HO, I&C Department and no irregularity was pointed out in the report and the stocks were found 'OK'.

**131.** PW28 also stated that sanctioning authority relies on the recommendations of the subordinate officers and at the regional office level, there are competent officers at different levels. After receipt of

recommendation from branch, the proposal is processed at Regional Office and the file is sent to AGM or Chief Manager Loans at the regional office level and at this level, the proposal is recommended for sanctioning of the loan to the sanctioning authority.

**132.** PW45 stated that all the limits were sanctioned by the Regional Office on the recommendation by the branch. For CC hypothecation , the regional heads had the power to sanction credit facility upto Rs. 250 lacs and the branch had been advised by the RO to conduct the visit to verify the stock position of the unit of the borrower as well as closely monitor the account and follow up the matter with the party. This witness referred to the monitoring officer reports dated 30.6.1997, 30.9.1997, 31.12.2997, 31.3.1998 and 30.6.1998 Ex. PW2/DX11, Ex. PW45/DA4/1, Ex. PW40/DT, Ex. PW43/DJ and Ex. PW43/DK respectively all bearing the signatures of PW44 P.K. Gupta . Branch certificates of compliance dated 2.6.1997 Ex. PW3/DA, 8.12.1997 Ex. PW40/H, 18.05.1998 Ex. PW40/DV and dated 11.8.1998 Ex. PW40/DW were also referred by this witness which were prepared and sent by the branch to RO whereby it was informed that the branch had complied with the conditions of sanction and there was no monitoring report on record which could show that the account of A-2 was not satisfactory. BCC dated 18.5.1998 Ex. PW45/DA5/1 whereby cash credit hypothecation limit had been enhanced from Rs. 90 lacs to Rs. 250 lacs, was bearing signatures of PW45 himself, as admitted by him, though

previously he had denied regarding dealing with any case or coming across any case wherein limit had been enhanced from Rs. 90 lacs to Rs. 250 lacs.

**133.** None of the prosecution witnesses stated about any irregularity or any illegality or even any unfair play in recommendation for the sanction of enhancement of limit of Rs. 250 lacs on adhoc basis as well as for purchase of cheques, though it may be noted that many officers dealt with and recommended for enhancement of limit to Rs. 250 lacs and were equally responsible and liable for making recommendation or processing note but only A-3, A-4 and A-5 have been made accused out of them. This accusation also does not stand proved.

**Issuance of Indemnity Letter by A-3:-**

**134.** It was the case of prosecution that A-3 had countersigned an indemnity letter dated 14.3.1998 submitted by A-1 by writing word 'CTC' and affixing his signature thereupon with the bank's rubber stamp and delivered the same to A-1, on the basis of which he collected the shipment from Budge Port Kolkata, whereas A-3 was not at all authorized to issue such type of indemnity letter.

**135.** Safdarjung Branch of Oriental Bank of Commerce where A-2 was having its account was falling in the category of C Branch . C category branches are to market foreign exchange business and this business is to be routed through 'B category' branches which is also known as authorized

branch for foreign exchange. Panchkuian branch was B category branch and Safdarjung Branch being 'C Category' Branch was not authorized for foreign exchange operation. As stated by PW53, bulk items such as petroleum products are imported through Sea route which takes time while submitting the documents to their banker and their banker presents the documents to drawee bank for payment or as may be the direction of the collecting bank. The delay in receipt of the original document cause heavy damage to the drawee in clearance of goods, therefore, there is facility of release of goods by submission of indemnity bond on the format of the shipping line duly signed by the consignee of the shipment . In such cases , in all probabilities, it is the bank of the drawee which is authorized to sign for release of goods to drawee or importer. The indemnity carries unconditional undertaking to make the payment as soon as the original bill of lading is received by the indemnity issuer banks branch. The authorized category B Branch issues such indemnities after collecting 110% value of the import bill or against trust receipt if the document is to be released against acceptance. This procedure is followed by the authorized branch for the customer dealing directly with the said branch. In case of bills drawn on customers dealing with 'C category' branches, the Branch Manager forwards the request for issuance of such indemnity with an undertaking to provide the funds on due date by way of forwarding this document to the authorized branch. As branch of Safdarjung was 'C category' branch, therefore they could not have issued

the indemnity as per the policy of the bank, whereas the said request was required to be forwarded to the authorized branch.

**136.** Based upon the said procedure, charge by the prosecution was with regard to unauthorized issuance of indemnity bond by A-3. However, PW53 having seen the letter of alleged indemnity bond bearing signatures of A-3 stated that the word 'CTC' is not a word used in such trade transactions and he could not comment on the relevance of this phrase ' CTC'. According to him, letter of indemnity is issued on the stamp paper after paying the stamp duty and not on the letter head of the borrower/client where goods are consigned 'to order' duly endorsed in favour of the bank by the shipper and the bank issuing indemnity bond is under liability to make the payment to the shipper and also provide original bill of lading to the shipping company. The subject indemnity was issued on the letter head of DPPCL and signed by A-1 and CTC by OBC Safdarjung Branch , therefore it was upto the shipping line whether to raise claim on A-2 or not. He stated that the subject letter of indemnity was not as per practice adopted by the bank in as much as it ought not to have been on the letter head of the bank/party and it also did not carry the stamp paper/proof of its payment of stamp duty. The indemnity bond Ex. PW53/B was forwarded by Safdarjung Brancy through a forwarding letter to Panckuyian Road Branch Ex. PW45/DA3/9. He did not recall the details regarding this letter and the action taken by Panchkuyian Branch in this respect.

**137.** Nevertheless PW45 stated about the said letter issued by Safdarjung Branch to Overseas branch Panchkuian Road for issuance of letter of indemnity on behalf of A-2. Alongwith the same, certified true copy of format of indemnity on the letter head of DPPCL was also attached for further action. Consignee as per the indemnity format was Oriental Bank of Commerce, Overseas branch, Panchkuian Road, New Delhi and the document being referred as Indemnity Bond according to this witness was only a format and as per practice, was required to be printed on the stamp paper signed by the consignee branch and only thereafter it could be accepted by a shipping line for release of goods. According to him, it is normal practice that before release of goods on the basis of indemnity bond, the shipping line is required to verify the indemnity bond from the consignee branch regarding genuineness of indemnity bond.

**138.** PW27 also acknowledged issuance of letter dated 14.3.1998 by Sr. Manager, Safdarjung Enclave Branch of Oriental bank of Commerce addressed to AGM, Overseas Panchkuian Road, New Delhi regarding issuance of letter of indemnity on behalf of A-2 enclosing therewith certified true copy of letter of indemnity for necessary action. The said letter was bearing endorsement of ' CTC' and as also confirmed by this witness, letter of indemnity is always issued on a non judicial stamp paper and it is also not required to be attested by any authority, whereas in the instant matter alleged letter of indemnity was on the letter head of A-2 . According to him, to verify

the signatures of the party, letter of indemnity is countersigned by the bank. In the present case, the counter signatures were put by A-3 being the branch Manager of Safdarjung Enclave Branch who had the authority to counter sign/verify the signatures of the client of bank i.e. A-2 in this case. The indemnity bond should have been issued by the consignee branch i.e. Overseas branch Panchkuian Road, whereas the subject indemnity letter is only letter of indemnity issued by A-2 and countersigned by Safdarjung Branch which was not on the prescribed format on the stamp paper. Though the shipper released the goods against the letter of indemnity and the bank was asked to release the funds by shipper. However, he stated that in Panchkuian Road branch, there was no liability outstanding against A-2.

**139.** PW39 confirmed that it is in practice to certify the signatures of the party executing the document, as per the record of the bank, and not the document. As it was not clear from the word 'CTC' therefore the inquiry was made from the branch manager i.e. A-3 who informed that he had simply put his signature certifying it “ certified true copy (CTC) and had nowhere countersigned the indemnity bond which fact was also mentioned in his report Ex. PW39/A. Since the bank was also under the impression that it may not entail unlimited liability on bank, the bank obtained an opinion from law firm Singhanian and Company, regarding the liability of the bank on such attestation of signatures by the bank manager on the indemnity bond and they opined that bank shall incur no liability for such certification of

signatures. Upon leading question put by prosecution, this witness remained consistent by submitting that it was difficult to say that indemnity bond Ex. PW53/B was certified to help the party since all such transactions or any other transaction in the banking system as a whole are undertaken in good faith and there is no bar from any authority not to attest signature or attest any copy of the original and it is for the accepting authority to see or decide whether any such attestation of any document is acceptable to them or not. In this particular case, the said attested indemnity bond was referred to Singhanian and Company to ascertain their view whether any liability for such action of branch manager can devolve upon the bank and it was clearly opined that for such attestation, bank was not liable for any action whatsoever. Moreover, to the knowledge of PW39, no liability for such attestation had devolved upon the bank in almost 18-20 years and therefore such attestation carried no meaning. He denied that Ex. PW53/B was counter signed by A-3 to help the party.

**140.** In terms of deposition of prosecution witnesses, apparently the alleged indemnity bond was merely a format and the signatures had been attested by A-3 while certifying the same as true copy which did not carry the liability qua indemnifying any liability, therefore charge levelled by prosecution qua unauthorized issuance of subject letter does not stand proved.



### **Opening of Six Accounts and Discounting of Cheques:-**

**141.** The next allegation is regarding six accounts having been opened on the introduction of A-1 during the tenure of A-3, though the accounts holders did not have their firm/company in Delhi and had business address of the place where A-2 had its company or the address of its employees or associates. In all these accounts, 14 cheques of accommodation nature were issued by M/s Ashirwad Traders, M/s Cont Freight Carriers and M/s Finesse Impex Ltd. which were purchased by A-3 with permission of A-4 and discounting of the cheques was allowed without any written/oral request made by the account holders and the cheque amount so credited was instantly transferred in CC A/c 92 of A-2 held by A-1.

**142.** A-3 was authorized to allow purchase of cheques only worth Rs. 75 lacs but the cheque amount being much higher than his power, he made recommendation to A-4 and A-4 gave permission in all the cases without any hitch. Successor of A-3 i.e. A-5 also allowed purchase of two accommodation nature cheques for total amount of about Rs.31 lakhs in the A/c of Raj Trading Corporation and Raj Translinks Pvt. Ltd. with the permission of A-4 . Counterpart of A-3 and A-5 Sh. Rakesh Sharma, Manager, OBC, Gandhidham was asked to withhold such discounted cheques from presentation in clearing at Gandhidham so that funds could be arranged by the party, i.e. A-2 and they were cleared for payment when the pay orders were issued by Sh. Rakesh Sharma from DPPCL A/c in favour of

the drawers A/c on receipt of money from the borrower. An amount of Rs.3,94,94,531.90 was credited in the CC A/c No. 92 of A-2 in OBC, Safdarjung Enclave Branch, New Delhi by discounting all 14 cheques of various amounts, which enabled the party to avail credit facility to the tune of Rs.3,94,94,531.90 for the period ranging from 16 to 89 days without having to offer any security, which was done with connivance of the accused persons.

**143.** PW18 identified the signatures of A-1 upon the account opening forms of M/s Raj Carrying Corporation , M/s Raj Translinks Pvt. Ltd. , M/s S.K. Traders, M/s Vijay Oil Company, M/s Ashirwad Traders and M/s Patel Traders. Introduction by A-1 with regard to six accounts which were opened by Oriental Bank of commerce, Safdarjung Enclave otherwise is not the disputed fact on record. These accounts were opened during the tenure of PW46 who also stated about the introducer of these accounts as A-1. One of the account holders expired and other four account holders were examined by prosecution as PW36, PW37, PW62 and PW69, whereas one of the witness i.e. PW62 was having two accounts introduced by A-1.

**144.** PW62 had opened two accounts in name of M/s Raj Carrying Corporation and M/s Raj Translinks Pvt. Ltd. introduced by A-1. According to him, these accounts were being operated by him and they used to purchase kerosene from A-1. He denied that he had signed the blank account opening forms or handed over the blank signed cheques to A-1. He rather stated that

he had never given blank cheques to anyone in his life. He denied that the transactions took place with M/s DPPCL and other companies by depositing the cheques handed over by him, though he admitted that pay in slips which were filled for depositing the instruments were not in his handwriting and did not bear his signatures but he volunteered to clarify that pay in slips were bearing signatures of his employees namely Harish Desai and Darshan.

**145.** PW69 also stated about the genuine business transactions between his firm and A-2. He had opened the account in name of Vijay Oil Company which was introduced by A-1. He used to make payment through cheques after purchase of the kerosene oil and most of the transactions of his business were with A-1 as he used to purchase oil for business purposes. With regard to cheque Ex. PW16/A-6, he stated that the said cheque was issued in favour of DPPCL for amount of Rs. 24,95,500/- bearing his signatures and accountant of A-1 had deposited the said cheque in the bank. With regard to pay in slip dated 23.4.1998 for Rs. 2495500/-, he stated that he did not know who had filled this pay in slip nor he was able to identify the signatures of depositor but he used to accompany Dinesh Kumar Singh who was accountant of DPPCL and used to do all the banking formalities.

**146.** According to PW69, he left Delhi in the end of year 1998 and carried the cheque book of this account alongwith him and due to passage of time, he did not remember how many and with whom, transactions were done by him. He did some business in this firm but since he could not understand the

business, he left Delhi and in the year 1998, he closed the business. He denied the suggestion that bank account was opened on asking of A-1 though stated that he was advised by A-1 to open the account to run business of kerosene oil , upon which he opened this account with introduction by A-1. He did not know as to how many cheques leaves were issued to him by the bank in the said account and denied that the cheque was given to A-1 in blank and also denied that he never had any business transactions with A-1 or A-2. Besides denial of the suggestion that Vijay Oil Company was not working in actual or that it was firm on papers only. He reiterated that all the transactions in this bank account were done by him and the cheque dated 23.4.1998 was issued by Ashirvad Traders to his firm which was issued as advance payment against the sale of SKO. He alongwith the accountant of A-1 namely Dinesh Kumar Singh and Hari Bhai visited the bank to get this cheque discounted in his account but did not remember which documents were got signed by the bank .

**147.** PW36 had opened the account in name of Esskay Traders with Oriental Bank of Commerce, Safdarjung Enclave Branch . The account was introduced by A-1. He had returned the cheque book after putting his signatures to A-1 after opening of the account. The cheque Ex. PW14/A9 and Ex. PW14/A-5 according to him were not containing his writing or his signatures. This witness also referred to Debit Authority Letter dated 9.3.1998 Ex. PW36/DA1/A2/1 with regard to transfer of funds of the said

account whereby he had authorized the bank to transfer the funds in the account of DPPCL. However he admitted his signatures over cheque dated 25.5.1998 Ex. PW16/A7 for amount of Rs. 38,45,000/- contents of which cheque, as stated by him, were not filled by him and he also denied the suggestion that there were regular business transactions between S.K. Traders and DPPCL. Statement of this witness was also recorded u/s 164 Cr.P.C. and he confirmed the contents of the same to be correct. As stated by this witness, he had opened the office of M/s DPPCL at Indore and he used to look after the said office which was registered with the sales tax department of Madhya Pradesh. He also opened the account of M/s DPPCL with Oriental Bank of Commerce at Indore. The signed account opening form was sent by A-1 from Delhi and on that basis, the account was opened . He was simply depositing the cash and cheque in this account on behalf of DPPCL and he used to purchase SKO from DPPCL between 1997 to 1999. He did not remember the name of the firm whose cheque he had handed over to A-1 nor the date and year when he had handed over the cheques to A-1 but he reiterated that after signing the cheque book, it was handed over to A-1.

**148.** PW37 is another account holder whose account was introduced by A-1. He was the proprietor of M/s Patel Traders and the bank account, as stated by him, was opened by A-1. His statement u/s 164 Cr.P.C was also recorded which as stated by him was voluntarily given by him. According to him, he

had never operated this account after opening nor he ever communicated with the bank to close this account or sought any update about the account. He had not given any authority to A-1 to operate his account and there were also no business transactions in relation to M/s Patel Traders . He stated that he had never reported or informed anyone that the blank signed cheque had been obtained by A-1 nor did he ask about the status of his blank signed cheques given to A-1. Though he volunteered to state that he had asked telephonically. He had not issued any 'stop payment' instructions regarding those cheques and also did not remember as to how many cheques were given by him to A-1. He did not know the date , time and place of handing over of cheques to A-1 but stated that he had handed over the cheques on the date when the cheque book was issued. He did not remember the date, month or year of the issuance of cheque book by the bank to him . He denied that he had not given any blank cheques to A-1 or that he had operated the account himself in due course of business.

**149.** Out of the five account holders, three of them have stated about the genuine business transactions between the parties, whereas PW36 and PW37 have supported the allegation of prosecution. They both were businessmen and were involved in the business of kerosene oil with A-1 for considerable period of time. PW36 was friends with PW37 and had stated that firm in the name of 'Patel Traders' was not in existence . According to him, PW37 never opened the firm with the name 'Patel Traders' and only bank account was

opened under the signatures of PW37 at instance of A-1. He also stated that it was decided by Shailesh Patel (PW37) that he will open a proprietorship firm in the name of 'Patel Traders' for trading of kerosene and for this reason, the account in name of 'Patel Traders' was opened. However, PW37 contradicted the said version of PW36 by stating that he owned 'Patel Traders'. The blank signed cheques having been handed over by PW36 and PW37 was not followed by reporting or informing anyone regarding the same as admitted by PW37.

**150.** It was submitted by Ld. Counsel for defence that if blank cheques were handed over, there is no reason why the said cheques were not used in the account of PW37 and there was only one transaction in the account of PW36. This court finds substance in the contention of Ld. Counsel for defence that a normal human being that too a business man would not hand over blank signed cheques to one person . Statements of both these witnesses recorded u/s 164 Cr.P.C. as per the settled law has only the corroborative evidentiary value whereas the testimony of both these witnesses regarding handing over of blank signed cheque book to A-1 neither inspires confidence nor is worthy of being tested upon the basis of normal human conduct not to talk about of a prudent businessman.

**151.** PW16 was employee of A-2 from 1994 to 2002 and deposed about all these companies having business transactions with A-2. According to him, the cheques were filled in by him at the instance of drawer of the said

cheques, thereby this prosecution witness confirmed regarding the genuine business transactions between such account holders and A-2.

**152.** PW24 stated that an account holder can introduce as many persons as he desires for opening fresh account and there is no bar for opening of various accounts by different parties with the same address. Besides the abovesaid, the purchase of cheques from the said accounts did not cause any loss to the bank as narrated by the prosecution witnesses.

**153.** PW45 was the loan officer to recover the charges and to prepare the vouchers and his duties included recovering the cost of documentation. He stated that for recovering the cost of documentation, in case of cheque discounting or otherwise, a voucher is prepared . Bank statements of M/s Vijay Oil Company, S.K. Traders, Raj Translinks Pvt. Ltd., Raj Carrying Corporation , Aashirwad Traders and Patel Traders reflected debit of Rs. 3/- on each statement which statement/entry was regarding the recovery of stamp charges on account of execution of loan documents as stated by this witness and as per the banking practice, the party seeking cheque discounting facility is required to visit the branch to sign the loan documents in presence of loan officer and being the loan officer in 1997-1998, it was part of his duties to get the loan document executed from parties and to obtain relevant documents from them. According to him, once loan document were executed regarding discounting of cheques, then separate request of discounting of cheque was not required as the format of loan document itself is in the form



of application and undertaking to repay.

**154.** Although PW45 referred to the requests letters issued by branch to Regional Office seeking permission to purchase the cheques of Rs. 40 lacs pertaining to M/s S.K. Traders, Rs. 25 lacs of M/s Raj Translink Pvt. Ltd, for Rs. 24955040 of M/s Vijay Oil Company , for Rs. 3988216.47 of M/s Raj Link Pvt. Ltd. , for Rs 2047618.37 of M/s Ashirwad Traders, Rs. 2046519.28/- of M/s Raj Carrying Corporation, Rs. 1542500.00 of M/s Ra Carrying Corporation , for Rs. 3129843.25 of M/s Ashirwad Traders, for Rs. 2563851.64 of M/s Ashirwad Traders , for Rs. 2568745.35 of M/s Raj Carrying Corporation, Rs. 2478245.39 of M/s Patel Traders, Rs. 7010905.15 of M/s DPPCL and for Rs. 3865762.90 of M/s S.K. Traders and stated that the bank had received payments with respect to all the cheques mentioned above and discounted by the bank from respective parties. According to him, branch was not required to know as to how the funds received by borrower by way of cheque discounting were being used and the branch was duty bound to ensure that the payment of all the cheques discounted by bank were received within time frame. As stated, in case the payment is received against cheque discounting, no information is sent to RO. He admitted that the said cheques were discounted by respective parties and thereafter funds were transferred to the account of M/s DPPCL. He stated that the cheques were discounted by branch with prior permission from RO.

**155.** PW24 is the witness who had dealt with most of the cheques which

were discounted /purchased and were bearing her signatures on reverse side. She stated that as per Ex. PW24/DX8, some other cheques of M/s Raj Carrying Corporation and M/s Raj Translink Pvt. Ltd. had also been discounted on earlier occasions. The cheques had been sent for outstation branch and there was no mention about return of the cheques. If a cheque is dishonoured, the outstation branch through its collecting branch returns the same and in that case the entries are made in the relevant register.

**156.** PW40 initially stated that there was no request on the pay in slips or in other letters for discounting the cheques by the concerned parties but in his later deposition stated that he gave the said statement as the documents were not previously shown to him.

**157.** PW45 rather stated that the bank had not suffered any loss on account of discounting of cheques as none of the cheques remained unpaid. He went on to say that the bank had earned interest also by way of discounting these cheques. PW45 confirmed that bank had received payment with respect to all the cheques which were discounted by the bank from respective parties and the funds were transferred to the account of DPPCL.

**158.** With regard to the allegation that delay in discounting of cheques and purchase of accommodation nature cheques enabled the party to avail credit facility for the period ranging from 16 to 89 days and the discounted cheques were asked to be withheld for presentation in clearing at Gandhidham so that funds could be arranged by party, but none of the prosecution witnesses have

supported the said allegation.

**159.** PW39 the inquiry officer also gave clean chit to the bankers qua the allegations of cheque discounting or any discrepancy in loan documents while submitting that he had telephonic talk with Sh. Rakesh Sharma (PW61) who had orally informed him that he withheld the cheques on the oral instructions of branch incumbent. However, he did not give name or the rank of the said person. He also did not produce any document to confirm that he at all received such an oral instruction from anyone, though PW61 himself was duty bound to return the cheque immediately upon the dishonour and was not authorized to retain the cheques with him. He also stated that it was the part of the practice of bank that in case of a cheque sent out station for collection, in case of its being dishonoured, the branch manager of said branch is required to return the same immediately and was not under the obligation to represent the same on his own. However, in case the cheque so returned was a discounted cheque wherein the funds of the bank were involved then, it was required on the part of the branch manager to make endeavour to get the cheque cleared and to represent the cheque instead of returning the same as dishonoured to the original branch immediately.

**160.** PW61 who was the witness from Gandhidham Branch and was the most crucial witness of the prosecution on the said aspect stated about some of the instruments having been lodged for clearing but returned unpaid again and the delay which had been caused in lodging of the said cheques must

have been upon the receipt of instructions from branch to hold the instruments. He stated that generally they cannot hold the instruments but as the finances of the bank were involved and to recover it, holding of the cheque is done. He elaborated that delay for putting the cheques in clearance house was for the reasons that they used to receive oral instruction over phone from Sardarjung Enclave branch for putting the cheques on hold so that the instrument could be realized and bank funds should not stand at risk.

**161.** With regard to time frame for clearance being 14 days and due to the delay caused beyond 14 days, regarding the allegation of occurrence of loss to the bank, prosecution witnesses in unequivocal terms stated about their being no time limit of 14 days for the purpose of discounting of cheques, while for the delayed period, according to prosecution witnesses, bank charges interest. PW39 stated that bank used to get interest in case of cheque discounting until the cheque discounted is realized with the bank and interest was required to be paid to the bank even though the delay was in realization of cheque.

**162.** PW46 specifically stated that there was no sealing of 14 days for realization in case of purchase of cheque. This witness was confronted with his statement recorded u/s 161 Cr.P.C. and he sought to clarify that as per bank guidelines, the period mentioned as 14 days for realisation of said cheques was correct as per record but the same was not applicable for the

purchase of third party cheques which is the issue in the instant matter.

**163.** With reference to the circular with regard to period for collection prescribed as 14 days, PW7 brought circular Ex. PW7/B which was relating to the collection of cheques and as admitted by this witness, it had nothing to do with the discounting of cheques.

**164.** Qua specific allegation against A-3 regarding conveying the instructions to Gandhidham branch to hold the instruments, PW61 though stated that they were receiving instructions from A-3 regarding the holding of cheque who was the branch incumbent of Safdarjung Enclave Branch during the relevant period but in cross examination stated regarding not knowing the name of the branch manager of Safdarjung Enclave Branch and that he had mentioned name of A-3 as informed to him by the CBI which he had presumed to be correct. He never had any occasion to personally meet or to have any talk or telephonic conversation with A-3 during his entire service. He also admitted that as per the general practice in the bank, in case the cheques have been discounted, all efforts would be made to ensure that the cheque is realized to minimize the loss of the bank. It was also part of the practice in case of discounted cheques of outstation branch, i.e. in case the cheques had been dishonoured, those were not to be returned to the branch to avoid the delay in transit and it was the general instruction to represent the same from time to time until the expiry of the instrument in an effort to realize the value of the discounted cheques.

**165.** With regard to the telephonic calls, he admitted that all the calls regarding withholding of the cheques were not received by him and these were probably attended by other officials of the branch but his subsequent answer demolished this charge qua A-3 with regard to illegal issuance of request for holding of the cheques by stating that even if Gandhidham branch would not have received any such telephone calls regarding withholding of the cheques, as per the standard general practice of the bank, the branch would have withheld the cheques with a view to make efforts to realize those cheques since those were pertaining to cheque discounting and since bank funds were involved, it was the duty of all officers of the bank to ensure recovery thereof.

**166.** PW46 denied having stated to CBI that the said cheques which had been purchased seemed to be accommodation cheques since they appeared to be drawn by the third party without having any consideration i.e. cheques do not relate to genuine business transaction. He admitted that purchase of accommodation cheque is not allowed in banking business and denied the suggestion that the said cheques were accommodation cheques or were purchased in order to give wrongful gain to the borrower by A-3 and A-5.

**167.** Similarly none of the prosecution witnesses supported the allegation regarding any of the cheques being of accommodating nature. PW40 stated that in banking parlance, a cheque which is not backed by a genuine sale and purchase transaction, is described as an accommodation cheque. As per the

prescribed guidelines, only cheques which are backed by genuine sale/purchase transaction, are to be purchased/discounted by the bank, whereas PW44 stated about the cheques being not of accommodating nature as payee and drawer were different entities. PW24 also admitted the suggestion put to her that the discounted cheques were not the accommodation cheques, whereas PW39 also confirmed that none of these cheques shown to him were of accommodating nature.

**168.** Prosecution witnesses stated that the recommendation for purchase of cheques was made to RO which had been approved following all the prescribed guidelines. In terms of the deposition of prosecution's own witnesses giving clean chit to the accused persons qua mis-use of their authority, the charge, as noted above, does not stand proved. Rather what has transpired from the testimony of prosecution witnesses is that the accused/bank's officers had followed all the guidelines and had made their best endeavour to realize the funds and protected the interest of the bank and at the same time, no loss was caused to the bank by availing of the cheque discounting limit by A-2 nor by introducing the opening of the accounts by A-1 and rather bank earned the interest in case of delayed payment.

**Diversion of Funds :-**

**169.** Prosecution's other allegation against A-2 is regarding opening of another current account no.1493 in the name of its sister concern M/s Delhi Petro Chem Ltd. In Green Park Extension Branch, PNB, New Delhi on

18.3.1999. M/s H.V. Exports, NDSE , Part-II, New Delhi of Sh. S.P. Sachdeva gave financial help to the tune of Rs. 40 lacs on 25.2.1999 vide pay order issued through Indusland Bank, Nehru Place, New Delhi and DEPB (Duty Exemption Pass Book) worth Rs. 52,76,936/- to O.P. Aggarwal of DPPCL, New Delhi for obtaining customs duty exemption. A-1 returned the amount vide five pay orders and one cheque worth Rs. 60 lacs, drawn on this account during April 1999.

**170.** As submitted by Ld. Prosecutor, A-1 had sufficient funds for payment of Rs. 60 lacs to M/s H.V. Exports during April, 1999 but he deliberately chose not to return the money to OBC where its Account had become bad in December 1998, thereby A-1, M.D. of A-2 clandestinely conducted his SKO trading business through his said accounts in Bank of Punjab and PNB but did not deposit the sale proceeds in CC A/c No. 92, Safdarjung Enclave, OBC, New Delhi because of which, the a/c turned bad and wrongful loss was caused to the bank.

**171.** PW26 Sh. R.K. Aggarwal was working as Accountant and Administrative Officer of M/s H.V. Exports whose proprietor was Sh. S.P. Sachdeva. H.V. Exports was earlier dealing in exports of readymade garments to USA. S.P. Sachdeva , Proprietor of M/s H.V. Exports was requested by A-1 through Sh.V.K. Thakur for issuance of Duty Exemption Pass Book to be issued by the office of Joint Director General of Foreign Trade. According to this witness, DEP Book is issued after completion of export obligation and it is issued as an incentive to the exporter and in the



present case, DEPB amounting to Rs. 52 lacs was issued in favour of M/s H.V. Exports which was transferable.

**172.** This witness referred to the issuance of pay order mark PW26/PX in sum of Rs. 40 lacs in favour of M/S DPPCL vide pay order no. 703647 dated 25.2.1999 by Indusland Bank Ltd, Nehru Place Branch, New Delhi. The pay order was issued in favour of M/s DPPCL to get the release of the goods imported by them. In all Rs. 92 lacs were given to M/S DPPCL and as on date, Rs. 26 or Rs. 27 lacs were still outstanding from M/s DPPCL. According to him, Mr. Sachdeva might have issued the said cheque .

**173.** Sh. S.P. Sachdeva was examined by prosecution as PW8. He had sold DEPB of approximately Rs. 52 lacs to A-1 and had advanced further loan to A-1. DEPB is the scheme as part of incentive, the exporters receive from the government when they export their products. DEPB is issued in the name of the firm by Director General of Foreign Trade and as submitted by PW8, same can be sold by the firm in the open market. This witness also stated about having advanced money to A-1 out of which the amount of Rs. 26 lacs approximately, as stated by him, was still due against A-1 as reflected in statement of account of their firm.

**174.** PW19 was looking after the import business of M/s H.V. Exports owned by PW8. He had introduced PW8 to A-1 when A-1 had stated to PW8 that he was facing problem in the matter of import at kandla Port and Sh. Sachdeva had helped A-1 by providing him duty exemption passbook.

**175.** PW21 Senior Manager from Punjab National Bank had stated about payment of Rs. 60 lacs with issuance of five pay orders and one cheque.

**176.** PW31 was working in Indusland Bank and had handed over pay order dated 25.2.1999 for an amount of Rs. 40 Lacs to investigating agency. The said pay order Ex. PW26/PX was drawn in the account which was opened in name of H.V. Exports and the pay order was issued in favour of DPPCL on 25.2.1999 from the bank account of H.V. Exports.

**177.** In terms of the condition of sanction for CC hypothecation limit, all the sale proceeds of hypothecated goods were required to be routed through the CC account in OBC, Safdarjung Enclave Branch. The amount provided to A-1, as stated by PW8 himself, was in favour of Delhi Petrochem Ltd. and towards the financial help and for providing of Duty Exemption Passbook etc. which had nothing to do with the amount of sale transactions/proceeds of M/s DPPCL required to be deposited in the CC account of OBC.

**178.** Further, in terms of the case of prosecution, OD Account no. 110216 of M/s DPPCL in Karol Bagh Branch, Bank of Punjab, New Delhi was opened in 1996. This account was lying dormant since then but it was activated by O.P. Aggarwal , M.D. M/s DPPCL in December 1998 and early 1999 for the purpose of his SKO related transactions, after the company's CC account in OBC became bad in December 1998. Similarly A-1 opened a current Account no. 1105393 in name of M/s DPPCL in the Green Park Extension Branch, Bank of Punjab, New Delhi on 3.2.1999. Amount worth

crores of rupees was credited in the two accounts including sum of Rs. 42,88,648/- given by PEC, Govt. of India Undertaking to M/s DPPCL on account of settlement of dues in respect of SKO trade undertaken by it with the company. Similarly amount worth several lacs of rupees had also been debited from the two accounts in respect of SKO trade undertaken by A-2 and A-1 deliberately concealed all these transactions from OBC, Safdarjung Enclave, new Delhi.

**179.** It is admitted on record that A-2 was having account in Karol Bagh Branch, Bank of Punjab since 1996 which was lying dormant and A-1 started operating from that account w.e.f. December 1998. It was submitted on behalf of A-1 that the account with bank of Punjab Ltd. was in existence even prior to obtaining bank loan from OBC. Since A-2 was facing problem in OBC, therefore, the account of Bank of Punjab Ltd. was transferred from Karol Bagh to Green Park Branch for its smooth operation and ability to pay government dues of different authorities like customs duties, sales tax, Income Tax and market commission, salaries to the employees, office rent and other daily and monthly expenditures and also payment to other parties for sale and purchase of SKO etc. Since the Karol Bagh branch was too far from the existing office of DPPCL therefore, the Bank of Punjab Ltd. Account was got transferred from Karol Bagh to Green park branch. Said fact is confirmed from the account statement of Bank of Punjab, Karol Bagh Branch and Bank of Punjab, Green Park Extension branch.

**180.** With regard to the proceeds of sale having been deposited with the other accounts of A-2 in Bank of Punjab, prosecution mainly relied upon the deposition of PW6, PW11, PW12, PW13, PW20, PW25, PW33, PW34 and PW41.

**181.** PW6 stated about the cheque Ex. PW6/B in sum of Rs. 10,30,737/- which was presented to Bank of Punjab by DPPCL. This cheque was issued by Finessee Impex Ltd. in favour of DPPCL which was cleared in the account of M/s DPPCL maintained at Bank of Punjab. However, PW6 did not know the purpose for which the present cheque was issued. Cheque Ex. PW6/B was issued by Finessee Impex Ltd.

**182.** Witness from Finessee Impex Ltd. was examined as PW41. This company was dealing in the Kerosene oil and had been importing kerosene oil from different ports. This company used to purchase SKO from DPPCL as well. As per the ledger Account, cheque bearing no. 322926 was issued by their company in favour of A-2 on 13.04.1998 for sum of Rs. 50 lacs . Since the product was not supplied by M/s DPPCL, amount of Rs. 50 lacs was refunded which was also reflected in their account statement. Cheque Ex. PW6/B was not referred by this witness and the amount of Rs. 50 lacs in terms of their ledger statement had also been received by them due to deal having not been materialized.

**183.** The contention of prosecution that the amount of Rs. 50 lacs was received against the sale of kerosene oil is not substantiated on record in

terms of deposition of PW41 as well as statement of account brought on record which reflects debit and credit entries for Rs. 50 lacs in the account of Finessess Impex Ltd and the transactions, in these circumstances, were not arising out of the amount of any sale proceeds. The cheque in sum of Rs. 10,30,737/- having been deposited in Bank of Punjab was dated 5.1.1999. As already noted, PW6 did not say about the purpose of deposit of said cheque and PW41 did not refer at all to the said cheque, whereas the embargo on deposit of the amount in other account was only the sale proceeds pertaining to kerosene oil required to be routed through OBC bank.

**184.** PW 13 was witness from Bank of Punjab, Karol Bagh. He referred to the cheque bearing no. 204296 dated 21.12.1998 for amount of Rs. 1576260/- which was for making of draft in favour of M/s Sumodh Petroleum Pvt. Ltd. Ex. PW13/X, cheque bearing no. 204299 dated 21.11.1998 for sum of Rs. 11 lacs in name of National Petro Company, cheque bearing no. 204288 dated 22.11.1998 for amount of Rs. 13 lacs in name of National Petro Company. Both these cheques bearing no. 204299 and 204288 were passed under transfer mode and bearing the stamp of transfer which amounted to interbranch transfer. As submitted by Ld. Counsel for defence these cheques are not entries into the bank account of A-2 in the bank account of Bank of Punjab. These are debit entries in the said bank account and there is no witness produced on behalf of Sumodh Petroleum Private Limited.

**185.** PW20 had handed over two cheques bearing no. 170228 dated 17.12.1998 in sum of Rs. 27,92,765/- in favour of M/s DPPCL and cheque bearing no. 170280 dated 22.12.1998 in sum of Rs. 402451/- in favour of DPPCL. He had not dealt with the said cheques in any capacity and was witness to merely handing over of the same to investigating agency.

**186.** PW11 referred to pay order no 077829 dated 29.12.1998 for Rs. 1 lac in favour of Delhi Petroleum Products Ltd. issued from account of M/s Alemco India Pvt. Ltd. He stated that he could not tell the purpose of the pay order which was issued in favour of Delhi Petroleum Products Ltd. and also stated that he had not given request letter of the parties for issuance of pay order

**187.** The witness from M/s Almeco India Pvt. Ltd. was examined as PW33 who had merely handed over certain documents to CBI, the original of which were not brought by PW33 and he also stated about overwriting on Ex. PW33/A. This witness also did not state about the purpose for issuance of pay order whereby accusation of prosecution remained unsubstantiated about routing of sale proceeds of DPPCL from other accounts.

**188.** PW34 was running gift Emporium at Gaffar Market, Delhi. He admitted having issued cheque for sum of Rs. 15,01,200/- dated 15.7.1998 Ex. PW34/C and other cheques Ex. PW34/D and Ex. PW34/E. These cheques had been issued in favour of DPPCL which amount was returned by DPPCL partly in cheque and partly in cash and the money was returned by

DPPCL because the deal was not completed. This witness also did not provide any substantiation to the case of prosecution regarding the sale proceeds having been deposited in the other account than CC Hypothecation A/c maintained at OBC.

**189.** PW12 Ramesh Chand Gilani is the witness from PEC Ltd. Cheque dated 14.6.1999 was issued in favour of M/s DPPC for Rs. 94,372/- This witness further referred to many cheques issued in favour of M/s DPPC Ltd. This witness also stated that LCs were being opened for the imports and they used to obtain margin money to the extent of 10% to 15%. On receipt of Cargo, goods were sold to the local associate on high sea basis and in such cases, it was the responsibility of the associate to fulfill all the responsibilities with regard to customs and bill of entry was filled in his name. Then the goods were stored in custom bounded ware houses. Cargo was hypothecated by the associate in favour of PEC Ltd. and the procedure of delivery was that on receipt of payment either full or partly, the goods were released for the amount realized through issue of delivery order in favour of the associate to the tank owner in whose custody the cargo was lying. The cargo was released under the supervision of surveyors appointed by PEC Ltd. and margin money was adjusted at the completion of the contract. There was also a contract for storing the cargo between the tank and owner and PEC Ltd. PW12 identified signatures of Kavinder Sharma, Dy. Marketing Manager of PEC Ltd. upon letter dated 29.11.2002 (D-30).

**190.** Kavinder Sharma was examined as PW25 who also referred to statement of payments received from DPPCL during the year 1998 and 1999. He further referred to the delivery orders of SKO issued by DPPCL Ex. PW25/C and Ex. PW25/D. Other reference was to the other documents which were regarding payment towards professional fee, regarding payment under LC, regarding storage of SKO, regarding interest incurred . According to him, PEC Ltd. was financing opening of letters of credit for import of SKO for DPPCL and S.B. International. The LCs were opened by their company in favour of foreign sellers for ensuring the payment to them on due dates on account of the said import. All the payments referred by him had been received by PEC Ltd. and the deliveries of SKO were effected. He admitted that LC for import of SKO in favour of foreign seller for M/s DPPCL was opened by PEC through its authorized bank and PEC had delivered to M/s DPPCL SKO out of the stock received from the vessels upon receipt of payment . He stated that all the expenditures were required to be borne by the party which in this case was M/s DPPCL. PEC had taken fixed trading margin and had received the entire payment.

**191.** Apparently, the amount paid to PEC was not the sale proceeds of SKO but as margin money and other charges against the opening of LC for import of SKO. It was submitted by Ld. Counsel for defence that A-2 as Agent was purchasing SKO for several other persons and the period of payment ranges from March 1998 which was much prior to the account of A-



2 having gone irregular. Besides that, the accusation pertaining to amount of Rs. 42,88,648/- on account of settlement of dues independently or cumulatively does not match with any of the entries in the account statement. Therefore, this accusation by prosecution again remains unsubstantiated.

**NPA and Settlement:-**

**192.** The CC limit was sanctioned in favour of A-2 which was followed by adhoc enhancements. In terms of the allegations, the said facilities were mis-used by A-1 who did not plough back sale proceeds which led the CC account to become bad and thereby wrongful loss was caused to the bank. As per the own case of prosecution, account of A-2 was running satisfactorily and sale proceeds were also being duly deposited in CC account. Prosecution witnesses confirmed regarding the satisfactory operation of account till the year 1998, however the account became scanty and irregular from November 1998 onwards and was lastly declared NPA on 31.3.1999. The required follow up was taken and the borrower was repeatedly told to regularize his limits and seek renewals.

**193.** A-1 was having good reputation in the market and transaction with all the concerned banks by A-1 and A-2 were running smoothly before they started having heavy losses in their petroleum product business as stated by PW22. The amount involved in the said business was upto crores till 1998 end. While

sanction of adhoc CC limit of Rs. 250 lacs, besides usual condition for charging security for enhanced limit, the other condition was that party will induct unsecured loan of Rs. 25 lacs immediately and to submit CA certificate to this effect and the borrower will submit complete renewal proposal in July 1998. With this, validity of sanctioned facility was extended till 30.9.1998.

**194.** The conditions were not complied with by the borrower, as deposed by PW46. The proceeds of sale were deposited in CC account till 30.9.1998, thereafter the sale proceeds were not fully deposited in the account and as a result of which the account became irregular and ultimately it was declared NPA. The borrower had been asked vide letter 14.9.1998 Ex. PW4/D-A/5-3 to submit CA certificate evidencing induction of unsecured loan of Rs. 25 lacs and documentary evidence for conversion of share application money into fully paid share. The party did not comply with these conditions.

**195.** Vide letter dated 4.12.1998, the party was asked to expedite the submission of renewal proposal and to regularize the account. Despite various letters written, personal visits made in the office of borrower and various telephonic requests, the party did not regularize the account. Vide Ex. PW44/A-25, letter dated 24.12.1998, A-5 informed RO New Delhi about his visit to Gandhi Dham Kandla on 22.12.1998 regarding physical inspection of SKO stocks stored there.

**196.** The stocks were not matching with the figures submitted by the

borrower in his stock statement which was also in violation of the condition of sanction and hypothecation agreement signed by the borrower. This witness also stated regarding the sale proceeds of Rs. 6624800/- approximately having not been deposited in the bank by borrower. Besides the stock in transit measuring 3855 MT of SKO @ 7000/- per Mt. amounting to Rs. 269.85 lacs as shown in the statement was also not deposited in the account. Vide Ex. PW46/A-8 letter dated 5.3.1999 branch manager asked the party regarding non submission of the renewal proposal and the account being irregular. The borrower was delaying the submission of stock and was also taking delivery of consignment from FOCT but had not deposited the sale proceeds in CC account as revealed from inspection dated 21.12.1998. The branch manager put his observation in letter that the party had stopped operation in CC account and bank had no alternative but to recall the entire advance.

**197.** So far as the bank is concerned, the officers concerned had taken all the precaution and required follow up for regularization of account till it was declared NPA. However, for A-1 and A-2, it is sought to be clarified by counsel for defence that stock inspection report as on 21.12.1998 was not correct as the stock was in process of being shifted to godown of A-2.

**198.** A-5 had conducted the inspection on 21.12.1998 for physical verification of the stock hypothecated to the bank and had submitted the report on 24.12.1998 vide Ex. PW44/A-25 . It was noted in the report that :

“ As per stock statements being submitted by the borrowers, the stocks are reportedly lying in the tanks of M/s Friends Oil and Chemical Terminal P. Ltd. (FOCT ) at Kandla Port. The borrowers had furnished a copy of letter dated 11.12.1998 evidencing the position of the stocks held by M/s FOCT as on 1.12.1998. The undersigned visited the office of M/s FOCT on 22.12.1998. On an attempt to reconcile the records of the stocks as furnished by M/s DPPC with the records of M/s FOCT, it was revealed that M/s DPPC had been obtaining the delivery of stock during the month of December 1998 . As on 21.12.1998, the position of stocks held by M/s FOCT was as under:-

M/s Delhi Petrochem Ltd. :- Nil

M/s DPPCL :- 12.788 MT ”

**199.** It was also mentioned in report that A-2 had placed an order with PEC for purchase of approximately 3000 mt of SKO for which PEC had opened an import LC in favour of suppliers on behalf of M/s DPPC . Margin money for the import LC was provided by DPPC. It was also reported that the consignment had arrived and was lying in duty unpaid bonded warehouse of M/s FSWAI and the ownership rights were not transferred to DPPC as the remaining formalities in regard to sales at high seas basis were yet to be complied with. Therefore, the bank's lien could not be got marked on the stocks.

**200.** Harish K Notani, witness from Friends Group of Companies was

examined as PW51 . According to him, the total quantity to be received in the account of DPPCL through PEC having arrived from FSWAI through vessel Marol was 8000 Mt. and FOCT through Curry was 3000 Mt. Stock position of SKO as on 24.12.1998 was given to M/s DPPCL vide letter dated 25.12.1998 Mark PW51/X2. The stock position of SKO as on date was 3000 Mt. The two vessels namely Marol and Curry were received by their company on request of PEC Ltd. and it was instructed by PEC that on their demand, the cargo would be delivered to the party on the satisfaction of the documents. In the instant case, the delivery orders were received and delivery was made and the status of the stock was given to CBI through the letter. Vide Ex. PW51/D/A-1 & A2 dated 25.12.1998, DPPC Ltd. was informed regarding the stock position of SKO on their account as on 24.12.1998 as 3000 mt in tank no. Crl 148, thereby no contradiction can be noted in mention of stock in the information furnished by A-2 since the stock had arrived and only the formalities were yet to be completed.

**201.** It is submitted by Ld. Counsel for A-1 & A-2 that the account of the borrower was regular and he had been transacting in crores of rupees. Substantial amount of interest had been accrued which had been duly paid to the bank and the bank was also gaining profit . The account of DPPCL was made NPA only because huge amount amounting to Rs. 15881414/- was transferred from Delhi Petroleum Account to Delhi Petrochem Account without any instructions.

**202.** It was further submitted that CC hypothecation Account of A-2 had sufficient balance during the relevant time to regularize the account. However the branch without the consent and without any authority from DPPCL, transferred the funds from the CC(HYP) account which was in crores to another current account of DPPCL bearing No. 2487 due to which the balance in CC(HYP) went down and the account of DPPCL became bad and later termed as NPA. It was submitted that if OBC had not transferred the amount from CC(HYP) to the other account, then the amount in the CC(HYP) account was sufficient to satisfy the loan amount and the circumstances of the present criminal case would not have arisen.

**203.** As submitted, the entries of transfer from DPPCL to Delhi Petrochem dated 6.7.1998, 25.7.1998, 30.9.1998, 30.9.1998 and 12.10.1998 for sum of Rs. 5273196/-, 5 lacs, 22 lacs, 54 lacs and 15 lacs respectively were without any authorization which resulted in account being NPA leading to huge losses. Defence had asked for the documents i.e. the vouchers leading to such transfers but the vouchers were not provided. Bank produced letter mark DW2/X1 reflecting that bank had no documents on basis of which the transfer had been made. Vide Ex. DW2/A/B, vouchers were stated to be not traceable. It was also submitted that no file noting on various letters was available as no action was taken on those letters.

**204.** PW39 stated that if the guarantors of the party/company are same and accounts have gone irregular, the banker has right off general lien and

set off and in that event, the bank can transfer the funds from one account to another account of the party without the mandate given by borrowal company/party.

**205.** While PW45 and PW4 were specific in answering in negative to the transfer of the funds from one bank account to another in the same bank without consent of the party.

**206.** Ld. Prosecutor as well as counsel for A-3 and A-5 submitted that there were many transfers of the funding from DPPCL to Delhi Petrochem, some of which were through cheques and for others, vouchers had to be filled up by the party concerned and there could not have been any transfer without authorization from the party. The borrower cannot get benefit of vouchers being not traceable with bank and the borrower had also never raised any objection qua the said transfers, if the same was without any authorization.

**207.** Fact remains that pertaining to the entries pointed out by Ld. Counsel for A-2, the vouchers remained untraceable with bank and at the same time, no correspondence/letters written by borrower to the bank raising objection qua those transfers were placed on record, while it is borne out of record that the substantial amount of money was transferred from one account to another.

**208.** It was submitted by Ld. Counsel for defence that irrespective of the accusation made by the prosecution against A-1 and A-2, which even if is

taken as gospel truth, nothing is brought on record to show any act of deception or making of false statements by A-1 and A-2. As further submitted, the present case has arisen out of complaint dated 22.3.2002 made by PW35 who himself had no knowledge regarding the genuinity and facts of the case. Three years prior to the said date on 7.10.1999, the claim had already been filed before DRT. In none of the documents placed before DRT, there was any allegation against A-1 and A-2 regarding any act of deception, of making false statements or of dishonest and fraudulent intentions.

**209.** A-1 and A-2 in defence brought on record settlement of claim filed with DRT alongwith internal note vide Ex. DW3/A1 and A-2 (colly) wherein there was no mention of any dishonest intention of A-1 or A-2 rather it was mentioned that since the obligants were not coming forward to adjust the account amicably and were showing indifferent attitude in repaying the bank's dues, claim was filed before DRT. The contention of Ld. Counsel for defence is found correct to the said extent regarding there being no mention of any deceitful act done by A-1 and A-2 in the civil proceedings for which now they have been accused.

**210.** As is established on record, there was no deception or dishonest intention of A-1 or A-2 in obtaining the loan facility from the bank. The account of A-2 was regularly maintained in the bank and the sale proceeds were duly deposited . Even with regard to the discounting of cheques, no



irregularity or illegality was found nor any loss was caused to the bank, rather bank earned the amount of interest from the same. With regard to deposit of funds in other accounts, the prosecution has not been able to prove that the said deposits or transactions were the sale proceeds of SKO required to be routed through OBC. Fact remains that the account of A-2 became irregular and repeated reminders sent to him for regularization and renewal of the proposals did not yield any result, leading to the declaration of account as NPA. A-1 thereafter submitted the proposal for settlement repeatedly .

**211.** It also stands established on record that borrower had approached the bank for settlement as per the prescribed guidelines. PW40 stated that bank has recovery policy under which cases relating to settlement of recovery are handled. The bank accepts the proposition of the borrower for settlement of the account as per the norms and benchmarks prescribed in the recovery policy. If borrower fails to pay the money, the bank has option to recover the money from mortgaged property by filing the suit of recovery. Bank in this matter also had filed the suit to recover the amount and counter claim has also been filed by M/s DPPCL.

**212.** PW43 also stated that in case the outstanding is not paid by the party, then bank can resort to recover the amount from the mortgaged assets as well as other assets of borrower by way of auction of the properties. According to him, the case is given to CBI when the fraud is being done by the party, whereas the recovery is a different aspect for which court is to be approached

for redressal. He had no idea whether DPPCL was willing to settle the amount with the bank or why the matter was referred to CBI. He admitted that collateral securities offered by DPPCL were found adequate to cover the proposed sanctioned limit and the loan agreement between bank and DPPCL was guaranteed by independent guarantor secured by creation of equitable mortgage of immovable properties and hypothecation of stock and debtor.

**213.** It was submitted on behalf of A-1 that he had made efforts for settlement and the matter was settled in Lok Adalat subject to board approval. He came to know that the bank officials had also recommended to settle the account but instead of sending the settlement for approval of board, Chairman of OBC turned down the settlement on the pretext that value of the property mortgaged was higher than the loan amount . In that eventuality, bank had the option to proceed with the sale of mortgaged properties under the proceedings of SARFASI Act for recovery of loan account but the bank did not do so. A-1 wrote to OBC showing his willingness to deposit the loan amount but his letters were not replied to by the bank. On various occasions, as per advise of bank, he deposited the initial amount in order to settle the account but bank never turned up to settle the account . As stated by him in his statement, he was still trying hard to settle the account with the bank and the bank had sold one of the properties for Rs. 27 lacs. It was also stated that the value of the mortgaged properties was quite high than the loan

amount and the properties are still mortgaged with the bank and the bank still has option to recover the dues by selling the mortgaged properties in accordance with law. He reiterated that the case was purely of civil nature and was wrongly registered by CBI.

**214.** Said statement of accused as well the similar deposition of prosecution witnesses find confirmation in deposition of PW39. He stated that with recommendation for settlement of outstanding by accepting Rs.165 Lacs, bank could be booking profit of the said amount besides saving future expenses. It was also mentioned that to settle the account was largely in the interest of the bank. Though this witness was not aware with regard to the settlement through Lok Adalat since he had conducted the investigation in the year 1999 and was not aware of the subsequent proceedings but according to him, even if the proposal was not accepted, bank could recover the amount under the provision of SARFASI Act and in his opinion, if the bank had opted for enforcing the provisions of SARFASI Act, the bank could recover the entire dues as the value of securities was quite high in comparison to outstanding.

**215.** PW3 was posted as CMD in July 2000 in Oriental Bank of Commerce. The proposal regarding settlement was put up before him on which he made endorsement “ sum offered is too little- value of mortgage property is quite high- offer is not acceptable. There is room for improvement and please renegotiate” . He stated that since value of the mortgaged properties given

was high, he wanted to convey that sum offered was lower as compared to the properties mortgaged with the bank. He admitted that he had not quoted any amount which should be acceptable to bank.

**216.** This court finds force in the submission of defence that since in terms of own notings of the higher officers of bank the value of the properties mortgaged by A-2 as collateral securities was higher than the loan amount and the bank in these circumstances could resort to the appropriate legal proceedings for recovery of the amount by selling the mortgaged properties if sum offered as settlement was not acceptable to the bank but instead of concentrating on recovery of the amount, the complaint was lodged with CBI. No intention of A-1 & A-2 to deceit the bank at any point of time is reflected on record and the case seems to be a civil case for recovery of the amount which recovery could be affected either by way of settlement or by selling of the mortgaged properties. The civil dispute seemingly has been converted into criminal prosecution .

**217.** Reliance placed by defence on following authorities is worth reference here:- **Indian Oil Corpn. Vs. NEPC India Ltd, & Ors. (2006) (6) SCC 736**, wherein it was observed that “ it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also,

leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

It was further observed that while no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. On positive step that can be taken by the courts, to curb unnecessary prosecution and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant”.

**218. All Cargo Movers (India) Pvt. Ltd. Vs. Dhanesh Badarmal Jain & Anr. (2007) (14) SCC 776** wherein FIR was registered for the offences u/s 406 & 420 IPC. One year prior to that complaint, a suit was filed in the original side of Bombay High Court, in which there were no allegation for their offence under section 406 & 420 IPC, Hon'ble Supreme Court quashed the criminal complaint while observing that “allegations made in the

complaint petition , even if given face value and taken to be correct in its entirety, do not disclose an offence. For the said purpose, the court may not only taken into consideration the admitted facts but it is also permissible to look into the pleading of the plaintiff-respondent in the suit. No allegation whatsoever was made against the accused in the notice. What was contended was negligence and/or breach of contract on the part of carriers and their agent. Breach of contract simplicitor does not constitute an offence. For the said purpose, allegations in the complaint petition must disclose the necessary ingredients therefor. Where a civil suit is pending and the complaint petition has been filed after filing of the civil suit, court may for the purpose of finding out as to whether the said allegations are prima facie correct, can notice the correspondences exchanged by the parties and the other admitted documents. As observed, Criminal proceedings should not be encouraged, when it is found to be malafide or otherwise an abuse of the process of court”.

**219. Dalip Kaur & Ors. Vs. Jagnar Singh & Anr. (2009) (14) SCC 696** wherein it was observed that “ If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the accused, same would not constitute an offence of cheating. Similar is the legal position in respect of offence of criminal breach of trust having regard to its definition contained in section 405 of IPC.

**220. Pradeep Kumar Vs. State of Haryana (1996) (2) Criminal Court**

**Judgments 301 (P&H)** wherein FIR was registered for the offence under section 406 and 420 IPC on the basis that accused took a loan from Punjab National Bank and had hypothecated certain stock in his shop. The accused allegedly had sold the said hypothecated stock and therefore the FIR.

The FIR was quashed by Hon'ble High Court while observing that “dishonest intention is necessary to establish an offence u/s 420 IPC with further observation that non payment of dues is a matter of civil liability”.

**221. S.P. Bajaj Vs. State of Haryana (2003) (2) CCJ 440 (P&H) and Rameshwar Dass Garg Vs. Punjab National Bank 2003 (2) CCJ 357 (P&H)** wherein interalia while referring to Hridaya Ranjan Pd. Verma & Ors. Vs. State of Bihar and Ors. (2000) (2) RCR (Criminal) 484 (SC), it was observed that “ so far as the offence u/s 420 IPC is concerned, it is very clear that there is no allegation in the complaint that the credit limit was got sanctioned by the firm or its parnters by playing any fraud on the bank. Simply because they have shown some lapses in repayment, would not by itself bring the case within the mischief of section 420 IPC ”.

**222.** Another point to be noted is that many of the bank officers who dealt with the file at different levels were the prosecution witnesses. PW45 was the one who had prepared the process note after the receipt of loan application. He was working as Loan Officer in Safdarjung Enclave Branch and the Loan Incharge was Mr. P.K. Gupta, Senior Manager who was examined by

prosecution as PW44.

**223.** PW45 handled the loan documents and loan disbursement work etc. After he had prepared the process note, recommendation was written by Mr. P.K. Gupta and then was put up before A-3. Certificate of compliance was also filled by this witness in his own handwriting which was certifying compliance of sanction condition of Rs. 90 lacs for regular CC limit. He had sent the certificate to RO and alongwith this BCC, he had also sent copy of Hypothecation of asset agreement for cash credit besides sending copies of all other documents. Legal opinion was obtained from R.K. Dhawan and Associates with regard to both the properties and copy of both legal opinions were also sent to RO alongwith the valuation report dated 14.3.1997 prepared by H. Chaddah and Associates Ex.PW45/R-1. Entries pertaining to stock statements were also made by this witness.

**224.** With regard to pre-sanction and post-sanction visits, the column was left blank in BCC because he had not visited the office of DPPCL though his branch Manager had visited the office and as there was no stock, hence visit to the Kandla port was not required. This was the witness who had prepared BCC dated 2.6.1997 Ex. PW3/DA and had left the column no. vii of BCC blank. He submitted that it is mandatory to mention discrepancy in BCC while in the instant matter the discrepancy with regard to non creation of charge by IOC had already been communicated to the RO through separate communication, seeking to Clarify the reason for col. no. vii of



BCC having been left blank by him. He admitted that at the RO level, BCC is put up before Loan Audit Cell (LAC) alongwith entire loan file maintained at RO for their scrutiny and assessment and that loan audit cell was usually headed by senior officers. He also stated that it is the duty of LAC to point out any deficiency or discrepancy found in the documents enclosed with BCC and loan file and to get the same rectified by informing the branch through letters/communications, whereas in the instant matter, vide letter dated 28.5.97 Ex. PW44/P in handwriting of PW45, he intimated to RO regarding follow up with ROC. In an office note of RO, LA opined that documentation formalities were complete. However a letter from IOC was yet to be received regarding the charge and that branch was following up the matter with IOC and party. According to this witness, till the date of transfer of A-3 from the branch i.e. 26.6.98, the CC account of DPPCL was satisfactory.

**225.** The next level officer in the branch was PW44 who had dealt with the loan file of A-2. He alongwith PW 45 and A-3 recommended and forwarded loan proposal of A-2 to the RO which was the sanctioning authority. He stated that being the loan officer, he had also processed and recommended the proposal of adhoc enhancement of limit in favour of DPPCL. While processing the credit facilities and proposal in this matter all the officers had followed the banking norms . He was also monitoring officer from March 1997 to 1998. He had made the monitoring report after verifying the entire

record and physically verifying the stock. He had physically verified the stocks only once and on other occasions, other officers of the branch as well as of Head Office had physically verified the stocks. He stated that had there been any irregularity or diversion in the account, the same would have been mentioned by him in the reports furnished by him as monitoring officer. He had submitted monitoring reports dated 30.6.1997, 30.9.1997, 31.12, 1997 and 31.3.1998 and according to reports prepared by him, the account operation was reported satisfactory. The sale proceeds were deposited in the account regularly. He also stated that all the documents sent by branch to RO in the present case for recommendation of credit facilities were verified and were found to be correct.

**226.** PW43 was posted as AGM, Regional Head w.e.f. February 1997 till June 1997 and had sanctioned limit of Rs 90 lacs to DPPCL. He stated that they received all the documents which were required for sanction of credit and document were found correct , therefore, sanction was accorded . The collateral securities offered by DPPCL were also found to be adequate to recover the proposed sanctioned limit. The loan agreement between bank and DPPCL was also guaranteed by independent guarantors secured by equitable mortgage of properties and hypothecation of stock. The hypothecation agreement executed between DPPCL and bank was complete in itself . According to this witness, whenever recommendation is forwarded to RO from branch, it is again scrutinized at two level of officers before being put

up before the regional head. The officer sitting at regional office and scrutinizing the proposal are generally of the same rank as of branch manager and one of them at least could be senior than the branch manager. Even the officers at the regional office are required to scrutinize the proposal independently and assess the recommendation depending upon the documents attached with the proposal by the party. These officers are also empowered to raise queries with the Branch Manager and call /seek clarifications/further informations as may deem fit and proper by that officer from the Branch Manager. Thereafter finally the matter is put up before the regional head. According to him, a monitoring officer is nominated at Branch level to monitor the loan account performance who submits his report every quarter to the regional office. As already noted, PW44 was the Monitoring Officer who had furnished the satisfactory performance reports pertaining to the account of A-2.

**227.** PW40 was the recommending authority at RO in between Credit Officer and the sanctioning authority. As recommending authority, he was required to study the note in detail and considering the full position as mentioned in his note, his role was to either recommend the facility or not recommend the same. In this case, he had recommended the facility based upon the position placed before him and no adverse comments about the conduct of account or irregularity relating to documentation or adverse remarks by inspecting authority were mentioned in the note which was

prepared by Sh. P. Shridhar, the then Sr. Manager at Regional Office. This witness placed his recommendation before sanctioning authority and same was approved by the regional head i.e. A-5. He admitted that during the relevant period, the regional head being the sanctioning authority had around 35/40 branches under him.

**228.** The other witnesses who had dealt with the file at some level or the other were PW4, PW24, PW49, PW46 and the witnesses who had dealt with the file but were not examined by the prosecution as witnesses were Ms. Renu Nagpal, Assistant Regional Manager, Ms. Mamta, Loan Officer, Mr. J.C. Dheer and Mr. P. Sridhar etc.

**229.** The prosecution banker witnesses were of the firm opinion that every officer handling with the file has to scrutinize and assess the proposal independently. As stated by prosecution witnesses, as per banking norms, all the officers at the branch level as well as at the regional level who scrutinized the proposal and put forward the recommendation are equally and independently responsible for the assessment and recommendation made by them before the loan gets ultimately sanctioned. In the instant matter, many bank officers at branch level and at RO level , as Monitoring Officer and Inspection Head had furnished the satisfactory reports and were part of the process of recommendation of the limits sanctioned to A-2, all of whom were equally and independently responsible . All of such prosecution witnesses

having been examined by the prosecution rather had not found any flaw or deviation from banking norms with regard to the transactions/limits permitted to A-2. Even then, some of them have been chosen by investigating agency to be accused whereas other equally and independently responsible for the same have been cited as prosecution witnesses.

**230.** It is pertinent to note here that in the internal note of bank dated 6.4.2002 filed before DRT, copy of which was placed on record by A-1 and A-2 in defence , it was found mentioned that CVC has recommended major penalty action against Sh. S.K. Khanna, Sh. D.K. Bhaskar and Sh. P.K. Gupta , whereas no action was recommended against Sh. J.K. Katyal, even then, Sh. J.K. Katyal has been made accused in the matter and P.K. Gupta has been examined as prosecution witness.

**231.** So much so that PW70 i.e. investigating officer himself admitted that he had occasion to see the bank's advance manual and these are the guidelines which the officers of the bank have to follow while advancing/sanctioning the credit facilities and the bank officers worked under these guidelines. He also admitted that during investigation, it came on record that for grant of loan facilities, loan application is processed and recommended by various officers at branch level as well as at the Regional office level . He had examined all the credit facilities and sanction orders. He admitted that the said sanction requests were examined and recommended by various officers at branch level before putting up the same before the

branch manager. Once the recommendation was sent by Branch Manager to the Regional Office, the loan file was examined and recommended by several officers of the bank who did not point out any discrepancies or anomaly in the account and documents and had recommended for grant of loan facility . He also admitted that the bank officers who had examined the loan files and recommended the grant of loan facility to DPPCL on various occasions at Regional Office level were senior bank officers than the Branch Manager. Investigating officer came to the conclusion that A-1 had activated another account in December 1998 and in early 1999 for the purpose of his transaction and the CC account in the OBC Bank became bad in the month of December 1998. A-1 deliberately concealed all the transactions from the officers of the bank but no evidence of any irregularity in grant of loan facility to DPPCL came to light on behalf of bankers. Rather IO himself in his cross examination admitted that during investigation, he could not find any evidence regarding any breach or any misuse of power or non following of the procedure laid by the bank by any of the bank officers at branch as well as at Regional office level .

**232.** It is astonishing to note that IO despite having come to the conclusion regarding 'no misuse' of power or breach or non following of the procedure by accused bank officers, yet decided to file the charge sheet against them. Apparently this seems to be a case where IO had exceeded his discretion and jurisdiction and himself seems to be in violation of the mandate of law,

whereby the innocent people have been booked for no fault of theirs. It turns out to be a case of sheer abuse of process of law reflecting traversity of justice. The novelist Graham Greene depicted innocence as a dumb leper who has lost his bell, wandering the world. The sooner society can recognize and deal with the menace of wrong accusation carrying no warning bell, the better for us all. Consequences of wrong accusation can be severe and devastating upon the accused. Even the accusation that something illegal has been done can be enough to dramatically change how the community treats such persons and even if the criminal charges are ultimately dropped, there can still be lingering doubt or misconceptions about the accused affecting their reputation.

**233.** Though Ld. Prosecutor tried hard to convince the court regarding the accusation against the accused persons but the prosecution witnesses themselves nailed the entire case of prosecution. It is also brought on record that due to the allegations, worst affected person is A-4 who had been removed from his job and has been deprived of all the pensionary and other regular benefits, therefore must get back at least the lost reputation and the financial benefits, though he cannot be compensated for the precious years of his life which have been lost due to pendency of the case. Not only A-3, A-4 and A-5 have suffered the prolonged trial but also have been forced to bear the social stigma, legal expenses and the mental and physical harassment for no fault of theirs and therefore are hereby permitted the liberty to seek damages for their unwarranted prosecution.

**Sanction :-**

**234.** Plea was also raised on behalf of A-3, A-4 and A-5 regarding the invalid grant of sanction for their prosecution .

**235.** PW28 had permitted sanction for prosecution of A-3. He was the Assistant General Manager in Oriental Bank of Commerce at the time of grant of sanction. He stated that A-3 was appointed and confirmed by the General Manager of the Bank and he was not aware of the legal provision that no officer less than the rank of appointing authority can remove the concerned official from the services, while admitting that he was subordinate to rank of General Manager on the date when he granted sanction for the prosecution. Besides that, this witness was not aware of the factual position with regard to alleged deficiencies and stated that he had granted sanction for prosecution on the basis of the material submitted by inquiry officer i.e. the investigating officer of CBI. CBI had sent some document alongwith the inquiry report. He had not even seen the concerned loan files before considering the question of sanction for prosecution of A-3. He did not remember on which date he received the report from CBI and also stated that he had accorded sanction for prosecution on the basis of the report submitted by the IO to CBI. Report was supported by the statement of witnesses but he did not remember if the report was supported by any documents.

**236.** Similarly for A-4, sanctioning authority was examined as PW3 who stated that proper authority in this case for sanctioning the prosecution was



Executive Director but he had left on promotion to some other bank. There was no amendment of regulation in so far as the appointment and removal of DGM rank was concerned, whereas PW3 was Chairman at the time of grant of sanction. He stated that he had perused the relevant record put by the department regarding this case and he relied upon the SP report with mention that no pre inspection report was conducted though all the witnesses in unequivocal terms had stated regarding no requirement for pre inspection of stocks since the stocks were yet to be purchased after the release of limit. He also admitted that he had not checked the earlier loans granted by A-4 which had been successfully managed. He had not gone through the hypothecation agreement , therefore he was not in position to say whether it was properly executed or not. He admitted that all pre sanction processes are the responsibility of the branch manager and he did not personally examine whether the equitable mortgage property/securities pledged with the bank in this case were sufficient or not. He did not go through the report of the Monitoring officer as the same were not placed before him though he had access to the said reports. He had not gone through the branch certificate of compliance before according sanction for prosecution. He did not know whether the branch certificate of compliance was part of the record placed before him .

**237.** He did not remember if he made the noting that value of securities was very high in this case, while also submitting that when he joined as Chairman on 17.7.2000, the complaint had already been sent to CBI on 5.7.2000 and prior to that, the decision in principle had already been taken by his predecessor. The abovesaid admission only point out towards the non

application of mind by PW8 for grant of sanction for prosecution of A-4 who otherwise had not gone through the relevant record and merely relied upon the report furnished by CBI.

**238.** PW2 was the sanctioning authority for A-5 who stated that only a noting was placed before him. All the facts regarding the case were put by the concerned official for the purpose of his decision. These facts were put up before him in the form of noting of that concerned officer in his own handwriting/typed form. It was submitted by Ld. Counsel for defence that the purpose for grant of sanction is not explained while it was admitted that all formalities had been complied with and rather A-5 was not even posted in branch during the relevant period.

**239.** It was submitted by counsel for defence that the date of application for applying the grant of sanction was not told by the IO nor the said application was part of record. Sanction order is dated 13.9.2003 for all the accused persons, whereas the statements of PW36 and PW37 were recorded on 16.9.2003. Statement of PW1 was recorded on 25.9.2003. GEQD opinion was also received after the sanction had already been obtained. The draft charge sheet is required to be sent to the sanctioning authority while in the instant matter, the sanction was accorded even prior to the preparation of draft charge sheet and conclusion of investigation on the same date i.e. 13.9.2003 for all the accused persons which itself is suggestive of non application of mind by the sanctioning authority.

**240.** As submitted by counsel for defence, IOC rejected the request of creation of charge on stocks on 17.5.1997. A-4 had joined on 6.6.1997 whereas the testimony of PW3 with regard to release of amount even after refusal by IOC by A-4 is apparently wrong which also formed the basis for grant of sanction as by that time, A-4 had not even joined the Regional Office. The decision in principal had already been taken by the predecessor of PW3, which again points out towards lack of independent application of mind by the sanctioning authority.

**241.** Ld. Prosecutor placed reliance upon following authorities:-

(i) **The State Vs. Lal Das & Ors. AIR 1953 BOM 177 (vol.40, C.N. 54) (1)** wherein it was observed that “ it is the duty of the lawyers to take the point about sanction at the earliest stage and invite the Judge or the Magistrate to decide it before proceeding to deal with the merits of the prosecution case”.

(ii) **Indu Bhushan Chaterjee Vs. State of West Bengal 1958 Crl.J. 279**, wherein it was observed that “ though it is true that the sanctioning authority did not call for any record in connection with the matter from his office nor did he call for the connected claim cases or find out as to how they stood. It was not for the Sanctioning authority to judge the truth of the allegations made against the accused by calling for the records of connected claim cases or other records in connection with the matter from

his office. The papers which were placed before him apparently gave him the necessary material upon which he decided that it was necessary in the ends of justice to accord sanction”.

(iii) **Hemant Kumar Mohanti Vs. State of Orissa 1973 SCC Online Ori 136** wherein it was observed that “ If some part of the investigation still remained before the sanction was given, it is to be seen if this had in any way vitiated the sanction order. What is necessary is placing of necessary materials before the sanctioning authority and not 'necessary evidence' before the sanctioning authority. Sanctioning authority is not supposed to carry on a preliminary investigation before according sanction. Accordingly, it was held that even if a part of the investigation was done after obtaining sanction, yet in the facts and circumstances of the case, the sanction order did not suffer from any infirmity on that score”.

(iv) **Gurbachan Singh Vs. State (Delhi) 1970 Cr.L.J. 674** wherein it was observed that “ it is not the objection of the section u/s 6 of Prevention of Corruption Act that a public servant who is guilty of the particular offence mentioned in that section should escape the consequences of his criminal act by raising the technical plea of invalidity of sanction. The section is a safeguard for the innocent and is not a shield for the guilty”

**242.** Per contra, Ld. Counsel for defence placed reliance upon **CBI Vs. Ashok Kumar Aggarwal Criminal Appeal No. 1838 of 2013** wherein it

was observed that “ the prosecution has to satisfy the court that at the time of sending the matter for grant of sanction by competent authority, adequate material for such grant was made available to the said authority. In every individual case, the court has to find out whether there had been application of mind on the part of sanctioning authority concerned on the material placed before it. There is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. If the sanction order on its face indicates that all relevant material i.e. FIR, disclosure statements, recovery memos, draft charge sheet and other materials on record were placed before the sanctioning authority and if it is further discernible from the recital of the sanction order that the sanctioning authority perused all the material, an inference may be drawn that the sanction had been granted in accordance with law. In nut shell, prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction. The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of

sanction while discharging its duty to give or withhold the sanction”.

**243.** Ld. Counsel for defence further placed reliance upon CrI. Rev. P. No. 462/2017 State Vs. Mukesh Kumar Singh & Anr. and W.P. (CRL) 942/2017 K.G. Tyagi Vs. State wherein, it was observed that :

“ 96. The principles for valid sanction can be summed up as :

(a) A valid sanction for prosecution under section 19 of POC Act granted by the competent authority is a pre-requisite , it being a safeguard for the innocent public servants to ensure discouragement of frivolous or vexatious prosecutions, the absence of such valid sanction rendering the prosecution that is launched a nullity ;

(b) The grant of sanction is an administrative function and the court would not sit in appeal over it by embarking upon an exercise of examining the adequacy of material placed before the sanctioning authority;

(c) The judicial scrutiny is more of the decision making process, however, it being incumbent on the prosecution to prove that the appropriate authority had granted the sanction having regard to all the relevant facts and after perusing the materials placed before it in entirety, such material comprising all the vital documents including those which may ' tilt the balance in favour of the accused'. The material on which the sanctioning authority proceeds to accord its approval for prosecution must be relevant to the case against the public servant and also be admissible in law.

(d) It is also sine qua non for the validity of the sanction that the

competent authority on which the power to grant sanction is conferred does not treat it as an idle formality and applies its own independent mind undertaking the task in a manner that does not reflect mechanical approach, not the least being under pressure, compulsion or constraint from any external force or quarter;

(e) While mere error, omission or irregularity may not be of any consequence, withholding of vital documents or material from the sanctioning authority, particularly such material as may tilt the balance in favour of the accused public servants causes serious prejudice which may occasion failure of justice vitiating the sanction for prosecution;

(f) While absence of sanction for prosecution is a question to be agitated at the threshold, objection to the validity of sanction may be raised by the accused public servant “at any time” or “at any stage” in the course of or during trial, it being incumbent on the Special Judge presiding over the trial to find, and determine, if there is any invalidity attached to the sanction order and further as to whether failure of justice has occurred on such account and pass the necessary order thereupon - more appropriate stage for reaching such conclusion being after evidence has been adduced on the “issue in question” which means evidence having been adduced on the issue of validity of sanction;

(g) If such objection is raised belatedly, the time lapse being of considerable significance, the court is not obliged to consider the effect of

any such error, omission or irregularity. In order to claim the protection of law against prosecution without valid sanction, the public servants, however, is expected to raise the issue at the earliest stage of the trial. The objection of such nature pressed when the trial is near termination would render the issue inconsequential. To put it simply, if the challenge to the validity of sanction is made at the initial stage of trial, and within reasonable period of time, the Special Judge is duty bound to examine the issue, being 'free' to pass an appropriate order thereupon, the inhibition of section 19 (3) (a) of POC Act and Section 465 Cr.P.C. being inapplicable to the trial court, such provision forbidding the appellate or revisional court from entertaining such objection for the first time at later stages. It must, however, be added here that the determination of the issue by the Special Judge in the course of the trial is subject to judicial scrutiny by this court in the supervisory jurisdiction ; and

(h) Further, it is necessary that the objection to the validity of sanction is considered and the issues raised are determined at the earliest for the reason continuation of criminal prosecution on invalid sanction is not desirable since such proceedings are void ab initio. Rather, if the objection is raised at an early stage, the court is duty bound to consider and decide upon it instead of relegating it to the concluding stage of final determination of the case, it being nor just or fair to do so since that approach would render the statutory protection illusory .”

**244.** IO in the matter had concluded regarding there being no evidence of



any breach or misuse of power or non observing of the procedure by any of the bank officers. This court finds force in the submission of Ld. Counsel for defence that had the IO narrated the conclusion to sanctioning authorities, there could not have been occasion or reason for grant of sanction for prosecution of any of the bankers.

**245.** Having discusses as above, the sanction accorded for A-5 by PW2, for A-3 by PW28 and for A-4 by PW3 are seemingly without independent application of mind and without having gone through the necessary documents/evidence and therefore cannot be termed as valid in eyes of law. However, the matter is being disposed off after conclusion of evidence while the prosecution has failed to prove the charges against any of the bankers, therefore the question of grant of valid or invalid sanction becomes insignificant and inconsequential at this stage.

**246. Qua the charge of conspiracy,** it was submitted by Ld. Prosecutor that conspiracy is hatched in secrecy and executed in darkness. Reliance was placed upon Vinay Jain Vs. State & Anr. CrI. M.C. No. 4792/2014 and State of Kerala Vs. P. Sugathan & Anr. (2000) 8 SCC 203 , wherein it was noted that in a case of conspiracy, it is not expected from the prosecution that it will produce evidence to show that conspirators executed agreement to commit crime before the witnesses to prove the existence of conspiracy. Conspirators take all precautions to keep their plan secret, hence prosecution cannot produce

direct evidence to prove agreement to commit conspiracy.

**247.** As was observed by Hon'ble Apex Court in Central Bureau of Investigation, Hyderabad Vs. K. Naryana Rao, Manu/SC/0774/2012, “agreement to commit an illegal act can be proved either by direct evidence or by circumstantial evidence. It was also observed that direct evidence to prove conspiracy is rarely available. Conspiracy consists in a combination or agreement between two or more person to do an unlawful act or to do a lawful act by unlawful means. A conspiracy is an inference drawn from the circumstances. There cannot always be much direct evidence about it. Conspiracy can be inferred even from the circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. Since Conspiracy is often hatched up in utmost secrecy, it is most impossible to prove conspiracy by direct evidence. It has to be inferred from the acts, statements and conduct of parties to the conspiracy. Thus, if it is proved that the accused pursued, by their acts, the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to attainment of the object which they were pursuing, the court is at liberty to draw the inference that they conspired together to effect that object. Though to establish the charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other's

presence; the agreement may be inferred from the circumstances raising presumption of a common concerted plan to carry out the unlawful design. Conspiracy need not be established by proof which actually brings the party together; but may be shown like any other fact, by circumstantial evidence.

**248.** Section 13 (1) (d) of POCA Act, 1998 reads as under:

Criminal misconduct by a public servant : (1) A public servant is said to commit the offence of criminal misconduct- if he

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage ; or

(ii) by abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage , or;

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

The necessary ingredients of section 13 (1) (d) are as follows:-

- 1) accused was a public servant.
- 2) accused used corrupt or illegal means or otherwise abused his position; and
- 3) accused obtained for himself or for any other person any valuable thing or pecuniary advantage.

**249.** The concept misconduct in relation to the service jurisprudence came up for discussion before the Apex Court in State of Punjab & Ors. Vs. Ram

Singh Ex-Constable (1992) 4 SCC 54, in which it was inter alia held that the word 'misconduct' though not culpable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, willful in character; forbidden act, a transgression of established and definite rule of action or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject matter and the context wherein the term occurs, regarding being had to the scope of the statute and the public purpose it seeks to serve. The misconduct also came up for adjudication before the Hon'ble High Court in Anil Maheshwari Vs. CBI in Crl. Appeal No. 1455/2012, Crl. M.B. 2246/2012, Crl. M.A. 442/2013, decided on 28.5.2013, wherein it was inter alia held that for an offence defined u/s 13 (1) (d) of POC Act, the prosecution is required to prove the criminality in the misconduct and therefore, the misconduct should be accompanied by culpability i.e the requisite knowledge that the misconduct is so gross so as to constitute an offence. Reliance can also be placed on R. Sai Bharathi's Case. It has also been held in catena of judgments that the definition of misconduct u/s 13 (1) (d) of POC Act, shows that the pecuniary advantage of advantage of any valuable thing to himself or to other person should be

coupled by either corrupt or illegal means or abusing the position as public servant or without any public interest.

**250.** In the instant matter, the evidence brought on record and the circumstances discussed (supra) do not point out towards involvement of any of the accused persons to conspire with others in order to cause loss to the bank and undue pecuniary advantages for them. The prosecution, apart from the fact that it has utterly failed to bring on record any evidence of conspiracy has also failed to bring on record any evidence of wrongful gain so as to attract the provisions of the Prevention of Corruption Act, 1988 or otherwise. The accused persons independently have not been found guilty of any misconduct, user of deceitful means and the banker accused persons have been held to have followed all the requisite procedure and guidelines and acting diligently as per the banking regulations to protect the interest of the bank. A-1, A-2 separately are also held not guilty of user of deceitful means, false or misleading representation or of fraudulent or dishonest inducement. Therefore, cannot be guilty of charge of conspiracy when individually also they have been found innocent.

**251.** Accordingly, the prosecution having miserably failed to prove any of the charges against any of the accused persons, all the accused persons are hereby acquitted of the charge u/s 120-B r/w sec. 420 IPC and sec. 13 (2) r/w

sec. 13 (1) (d) of PC Act framed against them. A-3, A-4 and A-5 further stand acquitted of the offence u/s 13 (2) r/w sec. 13 (1) (d) of PC Act , besides A-1 and A-2 who also stand acquitted of the offence u/s 420 IPC.

**Announced in the Open Court  
Today on 31.05.2018**

**(Savita Rao)  
Spl. Judge (PC Act), CBI-01(South)  
Saket Courts : New Delhi**