# Sri. K. Varadaraja Pai and Smt. Geetha V. Pai Vs State <BR> Sri. Krishnaswamy Sridhar Vs State of Karnataka

**Court:** Karnataka High Court

**Date of Decision:** June 18, 2013

**Acts Referred:** Prevention of Corruption Act, 1988 â€" Section 13(1)(d)

**Citation:** (2013) 4 AKR 776 : (2013) 3 KCCR 2368

**Hon'ble Judges:** Anand Byrareddy, J

**Bench:** Single Bench

**Advocate:** Ganesh Kumar R., Shri. V.A. Ramasharma and Shri. Sandesh J. Chouta, for the Appellant; C.H. Jadhav, for the Respondent

**Final Decision:** Allowed

## Judgement

Anand Byrareddy, J.
These appeals are heard and disposed of by this common judgment as they are appeals filed by two of the accused

persons convicted in the same case. The appellant, in the first of these appeals, was Accused no. 1 before the trial court (Hereinafter referred to as

"A-1" for brevity) and the appellant, in the second of these appeals, was Accused no. 3 (Hereinafter referred to as "A-3", for brevity). The facts

leading up to these appeals are as follows:

A-1 was the Senior Branch Manager, Corporation Bank, Cantonment Branch, MG Road, Bangalore, during the period 1999-2000. Accused no.

2 and 3 and 6 and 7 were said to be the Directors of Accused no. 8 to 11, which were companies registered under the Companies Act, 1956.

Accused no. 4 and 5 were said to be the legal advisers of the above companies and its directors.

It was alleged that at the relevant point of time, namely 1999-2000, several Non-resident Indians (NRI) had made substantial deposits with

Corporation Bank at the branch aforesaid, when A-1 was the manager. These deposits in US dollars and British pounds, was in excess of Rs.

10.25 crore, in Indian currency. The deposits were called FCNR deposits.

It was the case of the prosecution that the several accused, in conspiracy with A-1, had created loans in favour of the accused companies-

Accused no. 8 to 11, against the security of the FCNR deposit receipts of the NRI clients of the bank-without the knowledge or consent of the

NRI clients. The said depositors were the following:

i) Mr. & Mrs. Arjun Das Melwani

ii) Mr. & Mrs. Gopal Melwani

iii) Suresh Purswamey

iv) Mr. & Mrs. Dheerumal Bhagwanji Waya

v) Mr. & Mrs. Subash Vittal Das Karani

In order to achieve this, the accused had created documents to make it appear that the depositors had executed power of attorney in favour of

three non-existent person, authorizing those agents to transact with the Bank on their behalf in relation to their respective deposits.. In furtherance

thereof applications were shown to have been made in the name of the said depositors seeking sanction of loan, while offering the FCNR deposits

as security for the said loans.

It was alleged that the accused had created new account opening forms, letters of authority-authorizing the purported power of attorney holders to

secure loans by offering the FCNR deposit receipts, which were said to have been enclosed with the loan applications. It was also alleged that in

order to conceal their misdeeds, the accused had also created false FCNR receipts which had been sent to the NRI depositors, while the original

receipts were actually pledged with the bank as security for the loans obtained.

The mischief was discovered only by chance, when one of the depositors sought a refund of a deposit prematurely. It was then that the higher

authorities of the bank woke up to the situation and the matter was ultimately entrusted to the Central Bureau of Investigation which in turn had

after, investigation filed the charge sheet before the trial court, against the present appellants and others.

In so far as the charges against A-1 are concerned, it was alleged that apart from committing acts of cheating, criminal breach of trust, forgery,

falsification of accounts etc., which were offences punishable under the provisions of the Indian Penal Code, 1860 (Hereinafter referred to as the

IPC"", for brevity)-it was alleged that he had also committed an offence punishable u/s 13(1)(d) of the Prevention of Corruption Act, 1988

(Hereinafter referred to as the ''PC Act'', for brevity) as he was alleged to be guilty of misconduct by causing pecuniary advantage to the accused

by abusing his official position as a public servant, punishable u/s 13(1)(d) of the PC Act.

In so far as A-3 is concerned, the allegations are that apart from acting in criminal conspiracy with the other accused, he had committed the

offences of cheating, forgery and had used forged documents as genuine.

In order to substantiate the case of the prosecution 38 witnesses had been examined and 656 documents had been marked. Statements of the

accused u/s 313 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the "Cr.P.C., for brevity), had been recorded. The trial

court after having heard elaborate arguments had framed the following points for consideration:

1. Whether the prosecution proves beyond reasonable doubt that the prosecution sanction order issued under Ex. P1 is valid under law?

2. Whether the prosecution further proves that all the accused persons in this case in furtherance of their criminal conspiracy to commit the offences

have cheated the Corporation bank, Cantonment Branch, to the tune of Rs. 10.25 Crores with regard to the FCNR deposits of (1) Mr. Arjun Das

Melvani and Mrs. Laju Melvani (2) Mr. Gopal Melvani and Mrs. Ishwari Melvani (3) Mr. Suresh Puraswaney (4) Tharumal Bhagavanji Waya and

Mrs. Smt. Shantha, (5) MR. Subhash Vittal Das Karani and Smt. Manjula Subash with regard to sanction of loan and thereby they have

committed the offence punishable u/s 420 of the Indian Penal Code, 1860?

3. Whether the prosecution further proves that the accused in furtherance of their criminal conspiracy, has committed the offence of criminal breach

of Trust with regard to the FCNR deposits of (1) Mr. Arjun Das Melvani and Mrs. Lalu Melvani (2) Mr. Gopal Melvani and Mrs. Ishwari

Melvani (3) Mr. Suresh Puraswaney (4) Tirumal Bhagavanji Waya and Mrs. Shantha (5) Mr. Subhash Vittal Das Karani and Smt. Manjula

Subash held as FCNR deposits in the Cantonment branch of Corporation Bank and thereby they have committed the offence punishable u/s 409

of the Indian Penal Code, 1860?

4. Whether the prosecution further proves that the accused persons in furtherance of the criminal conspiracy to commit the offence, have also

committed the offence of forgery with regard to the FCNR receipts issued by Corporation bank, Cantonment branch in the name of (1) Mr. Arjun

Das Melvani and Mrs. Laju Melvani (2) Mr. Gopal Melvani and Mrs. Ishwari Melvani (3) Mr. Suresh Puraswaney (4) Tharumal " Bhagavanji

Waya and Mrs. Shantha, (5) Mr. Subhash Vittal Das Karani and Smt. Manjula Subash and also with regard to power of attorney purported to be

executed in the name of R.K. Prabhu, Alexander Robert, Suresh Peter and also the account opening form pertaining to the above said depositors

and also letter purported to be written by the said depositors and thereby committed offence of forgery punishable u/s 467 of the Indian Penal

Code, 1860?

5. Whether the prosecution further proves that the accused persons in furtherance of the criminal conspiracy to commit the offence have also

committed the offence of forgery for the purpose of cheating, with regard to (1) the FCNR receipts issued by Corporation Bank, Cantonment

Branch in the name of (1) Mr. Arjun Das Melvani and Mrs. Laju Melvani (2) Mr. Gopal Melvani and Mrs. Ishwari Melvani (3) Mr. Suresh

Puraswaney ''(4) Tharumal Bhagavanji Waya and Mrs. Shantha (5) Mr. Subhash Vittal Das Karani and Smt. Manjula Subash and (2) also with

regard to power of attorney purported to be executed in the name of R.K. Prabhu, Alexander Robert, Suresh Peter and (3) also the account

opening form pertaining to the above said depositors and (4) also letter purported to be written by the said depositors and thereby committed

offence of forgery for the purpose of cheating Corporation Bank, Cantonment Branch punishable u/s 468 of the Indian Penal Code, 1860?

6. Whether the prosecution further proves that in furtherance of the criminal conspiracy to commit the offence, they had used forged FCNR

receipts of the deposits and also power of attorneys, account opening forms and also the letters purported to have been written by the depositors

as genuine documents though they knew that they are the forged documents and thereby commuted offence punishable u/s 471 of the Indian Penal

Code, 1860?

7. Whether the prosecution further proves that in furtherance of the criminal conspiracy to commit the offence, the accused No. 1 Varadaraja Pai

being the Senior Manager of Corporation Bank, Cantonment Branch willfully and with an intention to defraud has destroyed valuable security

being the FCNR receipt of Gopal Melvani and Eshwari Melvani and thereby committed the offence punishable u/s 477(A) of the Indian Penal

Code, 1860?

8. Whether the prosecution further proves that in furtherance of the criminal conspiracy to commit the offence, the accused No. 1 being the Senior

Manager of Corporation Bank, Cantonment Branch has committed the offence of criminal misconduct punishable u/s 13(2) read with 13(1)(d) of

the Prevention of Corruption Act, 1988?

9. Whether the prosecution further proves that the accused persons in this case have committed the offence of criminal conspiracy punishable u/s

120(B) of the Indian Penal Code, 1860?

The court had answered points 1, 2 and 8 in the affirmative, points 3 to 6 and 9 partly in the affirmative and Point no. 7 in the negative.

Accused no. 2 had died during the pendency of the case before the trial court. The trial court has acquitted Accused no. 4 to 11.

The trial court has convicted A-1 for the offences punishable under Sections 120-B, 409, 420, 467, 468, and 471 of the IPC and 13(1)(d) read

with 13(2) of the Prevention of Corruption Act, 1988.

The trial court has also convicted A-3 for the offence punishable under Sections 120-B, 420, 467, 468, and 471 of the IPC.

It is the above judgment of the trial court that is under challenge in these appeals.

2. During the pendency of this appeal, A-1 died. His widow, as his legal representative-has been granted leave by this court to prosecute the

appeal.

3. It is contended on behalf of A-1 that the trial court has erroneously concluded that this appellant was a conspirator along with the other accused.

Whereas the material on record, and as borne out by the evidence of witnesses, it was very likely that the appellant was not aware of the alleged

forgery or the use of such forged receipts and other relevant documents as genuine. It is contended that he would have no reason to doubt the

genuineness or otherwise of those documents. There is no material whatsoever placed on record to demonstrate that the appellant was involved in

the creation of false documents or had allowed fictitious persons to be projected in completing the transactions.

It is pointed out that there were five sets of depositors, whose deposits are said to have been misused in committing the offences alleged, as

already stated above. It was essential for those depositors to have been examined as witnesses to establish the case of the prosecution. It is

evident that, of them, four did not choose to appear before the court and tender evidence. Hence, the trial court has not rendered any findings on

the charges, in so far as those depositors are concerned. The appellant is completely absolved of those charges.

It is contended that the only NRI depositor who had tendered evidence in support of the case of the prosecution, was examined as PW. 24. It was

the case of the said witness that he was a business man residing in Dubai. He had remitted the deposits in question, during the year 1999-2000, on

three different dates. He had made a deposit of US $4.00 lakh and 150000 British Pounds. The said amounts were deposited through a financial

consultant, Kiran Sanghani It was said that he had sent other related documents also through the said agent. And further that he had received the

receipts issued by the Bank, in respect of the deposits, also through Sanghani.

It was the further case of PW. 24 that he had renewed the deposits twice in two years, by sending back the original receipts, in his possession,

through courier and had received the same from the bank, directly, on both occasions.

It was his case that at no point of time he had sought to offer the deposits as security for any loan transaction, nor had authorized the same being

offered as such through any agent. It was claimed that he had decided to reinvest the deposits in another scheme-Indian Millennium Bonds-and

hence sought premature withdrawal of the deposits by a letter dated 15.10.2000 (Exhibit-P. 448). It was in response to the same that the Bank

had intimated him that his request could not be entertained as the deposits had been offered as security for the loan transactions in favour of the

accused, as intimated by letter dated 26-12-2000 (Exhibit-P. 449). It was then that a complaint was made by him of the irregularity.

The said witness had then denied a letter dated 12.6.1999, (Exhibit-P. 204) as being genuine-as it was not on his letter-head and placed reliance

on a photocopy of the original and actual letter dated 12.6.1999, maintained by him (Exhibit-P. 451)

Similarly, the witness had denied the FCNR Account opening forms maintained in the records of the Bank and the signatures, of himself and his

wife, appearing on the same. (Exhibits-P. 205, P. 206 and P. 208). And had asserted that the actual Account opening form duly signed by him and

his wife was as per the photocopy of the same produced and marked. (Exhibit-P. 452).

He had denied the FCNR receipts maintained by the Bank (Exhibits-P. 213, P. 217 and P. 245 ) as pertaining to his deposits.

The witness has stated that the deposits were initially made by him through his financial consultant, Kiran Sanghani and he had also received the

FCNR receipts through the said agent. However, the subsequent yearly renewal receipts were sent to him directly by the bank. The photocopies

of the same are marked as Exhibits -- P. 448(A), P. 448(B) and P. 448(C) and P. 450(A) to P. 450(F). He has stated at paragraph 21 of his

deposition that the originals of these receipts are in his custody at Dubai

At paragraph 16 of the deposition, the witness has stated that he had recovered the concerned deposit amounts from the bank, on execution of an

indemnity bond in favour of the bank.

Apart from the evidence of this witness, the prosecution had relied on the evidence of PW. 23, Latha Ravindran, an officer of the bank in charge of

credit and who had dealt with the FCNR Account in question. And PW. 2 Padmanabha Kamath another officer of the bank.

It is the evidence of PW. 23, Ravindran, that she was an officer with the bank in charge of the deposit section, during the period 1998-2000. She

had issued the FCNR receipts in respect of the deposits. It is stated that A-1 would inform her of such deposits and it would be recorded by her in

the ledger maintained in respect of such deposits on the computer system. That A- 1 would later hand over the connected account opening form

and the particulars would also be manually entered in the ledger. It was this witness who would affix her signature on the FCNR receipts apart

from the branch manager. The original receipt was kept in the safe room of the bank and this witness would send a copy of the same to the

depositor. But curiously the original receipts prepared in respect of the deposits in the first instance and marked as Exhibits P. 245, P. 213 and P.

217, when shown to PW. 24, he had denied that neither the originals or the copies thereof had ever been sent to him.

In so far as the receipts pertaining to the above deposits of PW-24 are concerned, this witness has admitted her signatures on the receipts marked

as Exhibit-P. 245, P. 433, P. 217 and P. 213. She has denied that the signatures on the receipts, marked as Exhibit-P. 432, P. 434 and P. 435,

are hers.

It is the evidence of PW-2, Kamath, that he was a second line manager at the bank, during the relevant point of time. It is stated by him that A-1

had mentioned that it was Accused no. 2, who had mobilized fee FCNR deposits and had availed loans on the said deposits. It was further stated

that A-1 was authorized to sanction loans on the deposits.

The said witness has stated the particulars of transactions pertaining to the deposits of PW. 24 and the misuse of the same, as recorded at

Paragraph-90 to Paragraph 105 of his deposition.

The learned counsel for A-1 would thus submit that the court below has arrived at its findings against the said accused on the basis of the above

evidence. The learned counsel would draw attention to the finding of the trial court at paragraph no. 30 of the judgment:

...But, what is worth to note about this case is that neither PW-2, Padmanabha Kamath, nor PW23-Ravindran have deposed any where in their

evidence that the said transaction relating to deposits, or execution of documents relating to loan transaction, including of creating of lien by Subash

Karani or his alleged power of attorney, has taken place in their evidence

The learned counsel would thus contend that the court below was proceeding only on the basis of the evidence of PW 24 to accept the allegation

that there has been mischief in creating false documents to create loans on the basis of FCNR deposits being offered as security for the same.

Further, the reasoning of the court below in accepting the evidence of PW. 24 as being adequate to prove the charge that is to be found at

paragraphs 32 to 35, which is extracted hereunder:-

32. Thereby, in the circumstances, that the alleged depositor has denied he having stood as guarantor to any party or person and also having

denied execution of any document either creating lien over the said deposit of any loan or for having given consent for making the said deposit

account as security for loan and also having denied execution of any documents in favour of the bank what is now to be seen is the fact as to

whether are there any convincing evidence to show that the evidence of PW23 Karani Subash in this regard is believable or not.

33. While considering this aspect of the case, it may be mentioned at the outset, at the cost of repetition that there is the evidence of PW24 Subash

Karani"s statement on oath that he has not at all executed any document and in his evidence he has also denied the signatures appearing on the

account forms and other connected documents, apart from empathetically denying that he has consented the said deposit amount to be security for

any loan. So far as this aspect of the case is concerned, what is also worth to note in this case is the fact that though PW24-Subash Karani has

denied in his evidence his signatures and the factum of those cash deposits as having been given for security of loan, I find that the matter brought

out in the cross-examination of P.W. 24 does not lead an inference to the effect that there is all probability of P.W. 24-Subash Karani having taken

loan basing on those deposit amount or that his testimony that signatures to be seen on those documents are not his signatures. There is not scant

evidence to suggest even on probability about P.W. 24 as having stood as guarantor or as having raised loan. What is worth to note in this case is

the fact that the form of foreign currency and it runs into many lakhs and crores in the Indian currency or money. Since he is admittedly a non-

resident Indian, it is obvious that Non-Resident Indian will send cash amount from the foreign countries for deposit in the Indian banks. When such

huge amount is being invested in the Indian Bank and it is pleaded that such huge amount had become the subject matter of lien of any liability,

there should be some consideration for Subash Karani to agree for creating of such liability. I find on going through the records in this case that

nothing has been brought I the evidence of this witness to suggest such probability of PW24 as having agreed of offering the said deposit amount

as security for loan.

34. At the cost of repetition it may be mentioned that:, in this case in his evidence he has denied any letter Ex. P204 dt. 12-6-99, as having

executed or sent to the bank. In this regard it may be mentioned that documents Ex. P204 show that in the said letter there is a statement to the

effect that along with the account opening forms, he has enclosed passport and photographs and he has also agreed for the said FD receipt being

pledged as security for loan of Rs. 2,02,50,000/- and agreed for crediting the said FCNR amount of 4-lakhs U.S. dollors to the current account

No. 2106. In his evidence he has also denied signatures appearing on the said documents as that of his signatures. Similarly, he has denied the

letter dt. 28-4-2000 Ex. P. 229 and Ex. P. 242, to be letters sent by him apart from denying the signatures, found on the said documents

purporting to be that of him and his wife, as the signature of himself and his wife. It is worth to note that in Ex. P. 229 there is a sentence to the

effect that deposit amount in the form of sterling pounds of FCNR Account No. 12/99 is consented to be withdrawn prematurely, similarly in the

letter Ex. P. 242, there is a sentence stating that he consents for premature closure of the F.D. Account No. 9/99 and requested to credit the said

amount to Loan Account No. 15236. He has denied the signatures appearing of "Subash Karani" and "Manju Karani" on this document as that of

the signature of himself and his wife. He has also denied in his evidence that the signatures appearing on account opening forms Exs. P. 205, Ex. P.

206, Ex. P. 208 and also Ex. P. 243, purporting to be that of the depositors Subash Karani and Manju Karani, as the signatures of himself and

that of his wife.

35. While judging about the probability relating to the genuineness of these documents basing on the evidence available, what is worth to note is the

fact that no where in these documents Exs. P. 204, P. 229 and P. 231 to P. 242 there is any reference about the consideration in favour of Subash

Karani consenting for either for his offer of consenting for the said deposit amount of 4-lakhs dollors remitted by him pledging document or offering

them to be the security for the loan of Rs. 2,02,50,000/- or for his request to credit the said amount to the current account No. 2106 of EMVEE

Group of Companies belonging to Accused No. 2 to 7. Admittedly, the said current account No. 2106 belong to EMVEE Comforts belong to the

accused 2 to 7. In the ordinary course, if such a large amount is being given as security or if a person consents to liquidate the said deposit amount

and consents for appropriating towards any loan amount of third person definitely there should be recital in such letter of authority mentioning the

reasons. I find on going through the matter brought out in the cross-examination of PW24 that, no attempt has been made to elicit in his evidence

that there were reasons for this witness to give consent or for agreeing for his such large amount in the form of his savings, being utilized as security

for the said loan or for discharging the loan of a third person against whom who is not concerned with, much less there is any suggestion to the

effect that he has any interest in the said Company which has incurred the said loan or, was having current account bearing No. 2106. Thereby, in

the absence of consideration in favour of Mr. Subash Karani for agreeing to pledge the said FCNR amount or for liquidate the said foreign

currency deposit and to agree for appropriating the said deposit amount towards the liability of a third party, it has to be said that such transaction

is highly suspicious. One more factum which cannot be lost sight off while considering about genuinity or otherwise of the document is the fact that

the said account opening form Ex. P. 205 Ex. P. 206 and Ex. P. 208 are the documents in the nature of Xerox copy. While appreciating this

aspect of the case, what is worth to note is the fact that when bank opens the account of a depositor, in the ordinary course, it will be on the

printed form available in the original form itself. But, careful examination of these three documents make it very clear that the signatures of the

depositors-Subash Vittaldas Karani and Manju Karani appearing on these documents 205, 206, 208 and 2015 on the Xerox forms though appear

to be original signatures made by use of ball pen the form as well as its type written content is the xeroxed matter which is definitely is one of the

circumstances leading to doubt about the alleged transaction. Thereby, if from this angle of probability there is every reason to say that the said

alleged transaction, entered through Exs. P204, P. 219, P. 229 and P. 230 to 242 are highly doubtful.

The learned counsel for A-1 would thus contend that the evidence on record of PW. 24 is hardly cohesive and is not supported by the evidence of

other witnesses for the prosecution. Neither the allegation of A-1 having acted in conspiracy with the other accused is established nor the factum of

forgery and use of false documents is established. The trial court has glossed over the significant failure of the prosecution, for reasons best known

to it, in not having examined the financial consultant of the depositor, who could indeed have facilitated the said depositor himself in having

committed fraud in having authorized the creation of the loans on his deposits and later having denied the same. Therefore, the learned counsel

seeks a honourable acquittal of A-1.

4. The learned counsel for the appellant in the second of these appeals would contend that the manner in which the appellant is shown to be

involved in these transactions is not at all demonstrated. The very status of the appellant herein is inconsistently stated. It is pointed out that in the

very judgment of the court below it is seen that the appellant is referred to as a ""Manager "" in the cause title. And is stated to be one of the

Directors of the accused companies, Accused no. 8 to 11, at Paragraph 4(a) of the judgment.

It is contended that the primary allegations in the case are against Accused no. 1 and 2. The said Accused no. 2 had died during the pendency, of

the proceedings. The conviction of the appellant is not at all justified, when the prosecution had failed to prove, any of the essential ingredients of

the alleged offences. The present appellant, it is contended, is said to have been instrumental in having prepared forged documents. The so called

hand-writing"" of the appellant on the allegedly fabricated documents is in fact a reference the alleged forged signatures of PW-24 and his wife.

The expert evidence adduced in the case could not be said to be conclusive about the appellant''s handwriting. Significantly no other witness has

spoken about the overt acts committed by the present appellant in the commission of the offences alleged. Nor is there any indication of the

monetary or other gain that the present appellant has derived on account of his alleged acts. The conviction of the appellant only on the basis of the

said expert evidence as regards his alleged handwriting-when there is no other evidence of the present appellant having forged the signatures on the

disputed documents and having used the same in the transaction, has resulted in a gross miscarriage of justice and is clearly erroneous.

5. On the other hand, the learned Senior Advocate Shri C.H. Jadhav, appearing for the learned counsel for the respondent, would seek to justify

the judgment of the trial court. Having considered the rival contentions and on a perusal of the record the reasoning of the trial court vis-Ã¯Â¿Â½-vis the

evidence on record is examined to consider whether the judgment of the court below can be sustained.

In so far as A-1 is concerned, though he has died during the pendency of this appeal and hence the appeal, in the normal course, would stand

abated in so far as the said appellant is concerned. However, his legal representative has come on record and having been granted leave to

prosecute this appeal and having regard to the financial implications in these proceedings-payable by way of fine and the denial of monetary

benefits due to the estate of the deceased on account of these proceedings-the legal representative has sufficient stake in prosecuting this appeal.

A significant circumstance that was sought to be highlighted by the accused has been considered by the trial court has having no bearing on the

merits of the case of the prosecution. It is not in dispute that the depositor, Subhas Karani, had initially made the deposits with the bank and is said

to have received the receipts through an agent, Sanghani. The said agent was not examined as a witness by the prosecution. The trial court has held

that the ""accused cannot take advantage of non-examination of Kiran Sanghani"". This opinion 13 unfortunate. The unilateral claims made by Karani

have thus been accepted. On this aspect, it may be pointed out that a glaring inconsistency as to the procedure followed by the bank in so far as

the custody of the receipts issued in respect of FCNR deposits and the claim of Karani that the originals were retained by him-would have

certainly required to be vouched for by Sanghani. In this regard it may be seen from the evidence of PW-23, Latha Ravindran, who was in charge

of the deposit section of the bank had stated that the original deposit receipts are kept in the bank safe room and copies of the same are sent to the

depositor. She had admitted her signatures on the original deposit receipts produced and marked at the trial as Exhibits P. 245, P. 213 and P.

217. However, Karani had categorically denied that neither the said originals or the copies thereof had been sent to him. On the other hand Karani

in his evidence had claimed that the original receipts were in his custody at Dubai, which he had received through his agent Sanghani, and he had

produced photocopies of the same as Exhibit P. 448 (A) to (C) and P. 450 (A) to (F).

The original deposit receipts referred to by PW. 23 are also identified by PW. 2 as well (See: Paragraph 91,92 and 100 of his deposition)

endorsing the statement of PW. 23.

Therefore, the contention of the accused that the examination of Sanghani as a witness would have thrown light on the bona fides or otherwise of

the claim of Karani, could not have been dismissed as being irrelevant.

The next glaring circumstance that the court below has itself noticed but has yet proceeded to hold against the accused is the fact that though

several documents have been marked through PW. 2, purportedly in support of the allegations of misuse of the deposit receipts by the accused,

neither the said witness or PW. 23, the two officers of the bank who have tendered the primary evidence regarding the transactions-have however,

not stated the alleged manner in which the mischief is allegedly perpetrated by the accused. And the role of each of the accused or the overt acts

attributable to each of them. (See Paragraph 30 of the judgment of the trial court)

The trial court has however, held that from the evidence of PW-24, Karani, it was clear that his denial of knowledge of any loan being obtained on

the strength of the deposits could be accepted as it was not evident from the material on record that he had any apparent benefit to be derived

from the transaction nor was any consideration shown as flowing to him. In view of the above inconsistency found in the evidence of this witness,

and in the absence of the evidence of Sanghani, the agent of the depositor, the trial court was not justified in finding favour with the negation of the

subsequent transactions, on the unilateral claim of Karani.

The trial court has proceeded on the footing that the denial of the transactions leading to the creation of loans on the deposits of Karani-rendered

all the documents connected with those transactions, as for instance the power of attorney said to have been executed by Karani and his wife in

favour of one Suresh Peter, who is said to have acted on their behalf in obtaining loans-the proceeds of which have been found to have been

credited to the current account of EMVEE group of companies of which A-2 and A-3 were said to be Directors, has been declared as bogus and

fraudulent. There is no evidence referred to by the court below in having concluded that the Power of attorney on the basis of which the transaction

was permitted, was a bogus document and that the power of attorney holder was a fictitious person.

The evidence on which the entire documentation has been declared as forged or created is on the basis of the opinion of the handwriting experts''

opinion. The said opinion is also the sole basis on which it has been concluded that A-3 is instrumental in forging all the disputed documents. PW.

34 is one of the handwriting experts, he was a Government Examiner of Questioned Documents. He has examined the specimen writings of Karani

marked as Ex. P-491 and his admitted writings as Ex. P. 448(a) and 450(a). He has examined the specimen writings of A-3 (Ex. P. 486 to P.

489). He has then pronounced that A-3 was the one who was the author of Ex. P. 439(a), P-500(a) and (b) and was also the signatory to Exs. P-

501, 502, 503 etc. The other expert witness was PW. 37. It is significant to note that the ""handwriting"" referred to are actually the disputed

signatures of Karani and his wife. As almost all the disputed documents are type written with only the signatures claimed to have been forged. It is

amusing that the specimen ""handwriting"" that is collected of A-3 is not his writing but the actual signatures of Karani and his wife and A-3 has

imitated the original signatures of those people-and the same are almost similar to the admitted signatures of Karani and his wife, which is uncanny.

It is not suggested that A-3 is a master forger, but the process of investigation does not appear to make sense. It was at best a test that could have

been adopted through Karani and his wife to obtain an opinion as to their signatures on the disputed documents as being forged. But to conclude

that a forgery matches a specimen signature, of a third person, reproduced by A-3, does not appear to be a rational or scientific conclusion.

In this regard, the opinion of the apex court, on a review of decided cases-as regards the value that could be attached to the opinion of a hand

writing expert, in the case of Alamgir Vs. State (NCT, Delhi), is expressed thus:

...It is true that B. Lal the handwriting expert, deposed that the handwriting on the forged Railway Receipt Ex. PW10/A was that of the same

person who wrote the specimen handwritings, Ex. PW 27/37 to 27/57, that is the appellant, but we think it would be extremely hazardous to

condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is now well settled that expert opinion must always be

received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of presidential

authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally

acted upon and it has almost become a rule of law. It was held by this Court in Ram Chandra and Another Vs. State of Uttar Pradesh, that it is

unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and

external evidence. This Court again pointed out in Ishwari Prasad Mishra Vs. Mohammad Isa, that expert evidence of handwriting can never be

conclusive because it is, after all, opinion evidence, and this view was reiterated in Shashi Kumar Banerjee and Others Vs. Subodh Kumar

Banerjee since deceased and after him his legal representatives and Others, where it was pointed out by this court that expert evidence as to

handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be

desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to

consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin Vs. The State of Madhya Pradesh and it uttered a note of

caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such

evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial. It is interesting to note that the

same view is also echoed in the judgments of English and American courts. Vide Gurney v. Langlands ( 1822, 5 B and Ald 330) and Matter of

Alfred Foster''s Will (34 Mich 21). The Supreme Court of Michigan pointed out in the last mentioned case:

Every one knows how very unsafe it is to rely upon any one''s opinion considering the niceties of penmanship Opinions are necessarily received,

and may be valuable, but at best this kind of evidence is a necessary evil.

We need not subscribe to the extreme view expressed by the Supreme Court of Michigan, but there can be no doubt that this type of evidence,

being opinion evidence is by its very nature, weak and infirm and cannot of itself form the basis for a conviction. We must, therefore, try to see

whether, in the present case, there is, apart from the evidence of the handwriting expert B. Lal, any other evidence connecting the appellant with

the offence.

In our view, however, reliance in Magan (supra) is rather misplaced in the contextual facts since no conviction is based on the opinion of the

handwriting expert but admittedly it can be relied upon when supported by other items of internal and external evidence. The handwriting expert''s

opinion simply corroborates the circumstantial evidence and as such we are unable to record our concurrence with the submissions of Mr. Singh

on this score.

Significantly, this Court in 1980 CriLJ 396 (SC) in no uncertain terms observed that the hazard in acceptance of opinion of an expert is not

because it is unreliable evidence, but because human judgment is fallible. Needless to record that the signs of identification of handwriting have

attained more or less a state of perfection and the risk of an incorrect opinion is practically non-existent. This Court went on further to record that

doubting the opinion of a handwriting expert ought to be a far cry and insistence upon further corroboration as an invariable rule does not seem to

be a justifiable conclusion. In continuation of the above noted principle, this Court went on to further examine as regards judicial precedence and in

that vein stated in paragraph 7 of the Report as below (SCC p. 709)

7. Apart from principle, let us examine if precedents justify invariable insistence on corroboration. We have referred to Phipson on Evidence,

Cross on Evidence, Roscoe on Criminal Evidence, Archibald on Criminal Pleadings, Evidence and Practice and Halsbury"s Laws of England but

we were unable to find a single sentence hinting at such a rule. We may now refer to some of the decisions of this Court. In Ram Chandra and

Another Vs. State of Uttar Pradesh, , Jagannadhadas, J. observed : ""It may be that normally it is not safe to treat expert evidence as to handwriting

as sufficient basis for conviction"" (emphasis ours). ""May"" and ""normally"" make our point about the absence of an inflexible rule. In Ishwari Prasad

Mishra Vs. Mohammad Isa, Gajendragadkar, J. observed : ""Evidence given by experts can never be conclusive, because after all it is opinion-

evidence"", a statement which caries us nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so

provided by the Evidence Act and, on the contrary, Section 46 expressly makes opinion-evidence challengeable by facts, otherwise irrelevant.

And as Lord President Cooper observed in Davis v. Edinburgh Magistrate (1953 SC 34) : ""The parties have invoked the decision of a judicial

tribunal and not an oracular pronouncement by an expert.

As regards the decision of Magan (supra) this Court in paragraph stated as below.

10. Finally, we come to Magan Bihari Lal Vs. The State of Punjab, upon which Sri R.C. Kohli, learned counsel, placed great reliance. It was said

by this Court:

...but we think it would be extremely hazardous to condemn the appellant merely on the strength of opinion evidence of a handwriting expert. It is

now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a

handwriting expert. There is a profusion of presidential authority which holds that it is unsafe to base a conviction solely on expert opinion without

substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in Ram

Chandra and Another Vs. State of Uttar Pradesh, that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be

relied upon when supported by other items of internal and external evidence. This Court again pointed out in Ishwari Prasad Mishra Vs.

Mohammad Isa, that expert evidence of handwriting can never be conclusive because it is, after all opinion evidence, and this view was reiterated

in Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others, where it

was pointed out by this court that expert evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive

evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by

circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in Fakhruddin

Vs. The State of Madhya Pradesh and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of

a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or

circumstantial.

Therefore, the manner in which the trial court has held that the entire transactions have been proved to be fraudulent and on the basis of allegedly

forged documents cannot be accepted. It certainly cannot be said that the prosecution has established its case against the present appellants in

these two, appeals, beyond all reasonable doubt.

The appeals are allowed. The judgment in so far as the conviction of these appellants is concerned is set aside. The appellants are acquitted and

the fine amount if any paid by the appellants shall be refunded.