

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 6th August, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No.10 of 2024

Appellant : Ranjit Ghimirey

versus

Respondent : State of Sikkim

Appearance

Mr. R. C. Sharma, Advocate for the Appellant.

Mr. Shakil Raj Karki, Additional Public Prosecutor for the State-Respondent.

and

Crl.A. No.11 of 2024

Appellant : Madan Subba

versus

Respondent : State of Sikkim

Appearance

Mr. Jorgay Namka, Senior Advocate with Ms. Zola Megi, Advocate for the Appellant.

Mr. S. K. Chettri, Additional Public Prosecutor for the State-Respondent.

Applications under Section 374(2) of the Code of Criminal Procedure, 1973

JUDGMENT

Meenakshi Madan Rai, J.

1. Crl.A. No.10 of 2024 (*Ranjit Ghimirey vs. State of Sikkim*) and Crl.A. No.11 of 2024 (*Madan Subba vs. State of Sikkim*), are being disposed of by this common Judgment.
2. For brevity, the Appellant in Crl.A. No.10 of 2024, shall be referred to as "A1" and the Appellant in Crl.A. No.11 of 2024 as "A2".
3. A1 was convicted and sentenced to undergo simple imprisonment for a term of three years each, under Sections 468,

471, 420 read with Section 34 and Section 120B(2) of the IPC along with fine of ₹ 10,000/- (Rupees ten thousand) only, each, under each of the Sections with default stipulations.

(i) A2 was convicted and sentenced to undergo simple imprisonment for three years each under Section 420/34, Section 120B(2) of the IPC and under Section 13(1)(c)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter, the "PC Act"), along with fine of ₹ 10,000/- (Rupees ten thousand) only, each, under each of the Sections with default stipulations. He was acquitted of the offences under Sections 468 and 471 of the IPC.

(ii) The convictions ensued, following the trial of A1 and A2 in the Court of the Learned Special Judge (PC Act, 1988), Gangtok, Sikkim, in ST (Vig) Case No.02 of 2019 (*State of Sikkim vs. Ranjit Ghimirey and Another*).

4. The Prosecution case commenced with the lodging of FIR (Ext P-45/P.W.18), by the Complainant, Man Bahadur Tamang PW-6, on 31-08-2016, at around 11.30 hours, alleging that A1 had taken his handwritten "*parcha khatiyan*" (land title documents) from him, assuring him that he would obtain a computerised copy of the document as written documents were redundant. He failed to return the document despite lapse of a long period of time. On 20-05-2016, PW-6 received a Notice from the District Collector's Office, at Gangtok, Sikkim, seeking repayment of the loan availed by him. As he had not taken any loan he made enquires, during which it came to light that, A1 by impersonating him (PW-6) had utilised his land documents to obtain a hotel loan from the Sikkim Industrial Development and Investment Corporation Limited

(SIDICO), having affixed the photograph of Chandra Kumar Rai PW-33, on the loan application dated 03-12-2008. A1 prepared and signed the requisite loan documents. A2 at the relevant time was posted as General Manager, SIDICO, Jorethang Branch. In the context of the loan application of A1, A2 is alleged to have submitted two false inspection reports dated 30-11-2008 and 24-12-2008. In the first inspection report, dated 30-11-2008, he recommended that an "Agarbatti" factory was a viable proposition and that Man Bahadur Tamang (PW-6, the Complainant) was a businessman, running a grocery shop, one taxi van and a garment business in the locality. That, loan be sanctioned to him. Based on this false report, a loan of ₹ 1,00,000/- (Rupees one lakh) only, was sanctioned by the SIDICO on 03-12-2008. The loan amount was to be released in two tranches. On 03-12-2008 he filed an application seeking release of the first instalment of ₹ 50,000/- (Rupees fifty thousand) only, which came to be released on 16-12-2008. In the second inspection report, dated 24-12-2008, A2 claimed to have seen a lease agreement between Man Bahadur Tamang (PW-6) and his landlord Tilak Lohagun (PW-23), regarding the location of the restaurant. He claimed to have inspected the proposed location for which furniture and other necessities had already been acquired. He therefore recommended release of the balance loan amount of ₹ 50,000/- (Rupees fifty thousand) only. Based on his recommendation, the second instalment of ₹ 50,000/- (Rupees fifty thousand) only, was released on 06-01-2009. The entire loan amount was alleged to have been fraudulently withdrawn by A1 through withdrawal slips signed by him impersonating PW-6. Hence, the matter came to be reported and

the case registered against A1 and A2 at the Sikkim Vigilance Police Station as Case No.RC-11 of 2016. Charge-Sheet was filed against both A1 and A2.

(i) Charge against A1 was framed under Sections 468/34, 471/34, 420/34 and 120B(2) of the IPC.

(ii) Likewise, Charge against A2 was framed under Sections 468/34, 471/34, 420/34 and 120B(2) of the IPC read with Section 13(1)(b) of the PC Act punishable under Section 13(2) of the same Act. Both A1 and A2 entered their respective pleas of "not guilty" and claimed trial.

(iii) The Prosecution examined thirty-six witnesses including the Investigating Officer (I.O.) of the case. Both A1 and A2 were duly afforded an opportunity of explaining the incriminating evidence against them as provided under Section 313 of the Code of the Criminal Procedure, 1973 (hereinafter, "Cr.P.C."). Both claimed innocence. The final arguments of the parties were heard, following which the impugned Judgment and Order on Sentence, both dated 21-02-2024, were pronounced.

5. Learned Counsel for A1 before this Court, stressed the point that the Prosecution failed to furnish the handwritten *parcha* allegedly taken by A1 from PW-6 the Complainant, in order to obtain a computerised *parcha*, which is the basis of the Prosecution case, thus razing the Prosecution case to the ground. The I.O. had made a bid to improve the Prosecution case by stating that, A1 had not taken a handwritten *parcha*, but a computerised one, which is contrary to the assertion made by PW-6. It was urged that, as Ext P-30/PW-10 is the computerised *parcha*, already issued on 31-07-2007 to PW-6 by the concerned Government Department,

allegation of A1 taking the handwritten land title documents of PW-6 to obtain a computerised *parcha* and fraudulently using it to obtain loan is untenable. PW-10 Dharnidhar Sharma, the Head Surveyor in the Office of the Sub-Divisional Magistrate (SDM), Soreng, for the year 2007-08 exhibited the computerised *parcha*, instead of PW-6, raising doubts about the veracity of the document. The contradictions in the Prosecution case are apparent as in Ext P-30/P.W.10, the *parcha khatiyen* of PW-6, the remarks "*Mortgaged to Sidico, Gangtok on 8/12/08*" are endorsed, but on the same date, the SDO, Soreng (PW-34), vide Ext P-18/P.W.4, issued a "Non-Encumbrance Certificate", for the same plot of land, certifying that the property is free from all encumbrances and saleable at market rate. That, by issuing two contradictory documents, it is in fact PW-10 and PW-34 who have committed an illegality. It was further urged that it was PW-27, D. B. Khatai who had taken the document if at all and not A1, as PW-27 is the recipient of the *parcha* as recorded in the Receipt Ext P-29/P.W.7 and he is the signatory thereto and not A1. PW-6 under cross-examination admitted that, he could not recall who had scribed Ext P-29/P.W.7, consequently there is no evidence against A1 concerning the document. That, although PW-11 Hari Pd. Chhetri, claimed to have prepared Ext P-29/P.W.7, the document is devoid of his signature and he admitted to seeing A1 for the first time in the Court and not when the document was allegedly prepared. Evidence reveals that neither A1 nor PW-6 were present when Ext P-29/P.W.7 was prepared. The Prosecution also failed to prove the seizure of the said document, as PW-1 Adeep Gurung the seizure

witness admitted to having no knowledge of the contents of the Seizure Memo Exbt-1.

(i) In the next line of his arguments, Learned Counsel contended that, although PW-6 had deposed that he received a Notice from the District Collector, for repayment of loan, but no such notice was exhibited by the Prosecution and PW-36, the I.O., admitted as much.

(ii) PW-6 is admittedly unaware of the contents of the Complaint Ext P-28/P.W.8, added to which he had deposed that on the same date, i.e., 31-08-2016, he was at his home in Nayabazar. It is an impossibility for him to have been at the Vigilance Office also on the same date, thus revealing the deceit in his evidence.

(iii) It was also argued that, document, Ext P-29/P.W.7 (*supra*), was allegedly prepared in the year 2013, but the FIR was lodged only in 2016 with no explanation for the delay.

(iv) PW-2 admitted that on being requested by a person she stood as witness for both Receipt Exbt-2, dated 06-01-2009 and Exbt-3 Promissory Note, dated 06-01-2009, in the name of Man Bdr Tamang and signed on it, but she failed to identify the person who had made the request. As per PW-9, she met A1 only in the year 2014, while Ext P-20/P.W.4 Promissory Note bearing her signature as witness, is dated 16-12-2008 and Ext P-21/P.W.4 Receipt is dated 16-12-2008 of ₹ 50,000/- (Rupees fifty thousand) only, there is therefore no proof against A1 that he had made PW-9 sign on these documents. That, Ext P-26/P.W.5, cheque amounting to ₹ 50,000/- (Rupees fifty thousand) only, dated 16-12-2008 and Ext P-27/P.W.5 cheque dated 06-01-2009, both have been issued in the name of Man Bahadur Tamang and not to A1. PW-3 Santa

Bir Rai, the Chief General Manager of SIDICO, Jorethang, has deposed that the cheques pertaining to loans are disbursed to the loanee and never to a third person, scoring out A1 as the recipient of the cheques. PW-4 an employee of the SIDICO also vouched for the fact that loans are sanctioned only after proper verification. The I.O. PW-36, admitted that the cheques were issued in the name of Man Bahadur Tamang and not that of A1.

(v) The loan application form bears the photograph of PW-33 Chandra Kumar Rai, who admittedly had given his photograph to PW-6 and not to A1. Ext. P-14/P.W.4 the Security Bond bore the photograph of PW-26 Bhanu Bhakta Kami, but the name against the photograph was of Nar Bahadur Kami PW-24, this anomaly was never clarified by the Prosecution. That, the Bond was also signed by Nar Bahadur Kami acknowledging that he had become the surety of the Appellant as mentioned in the document. Document 'A' reflects plot numbers 62 and 522 which are admittedly the properties of Nar Bahadur Kami, establishing that it was PW-6 Man Bahadur Tamang, who had taken the loan for which Nar Bahadur Kami was his 'security'. However, PW-24 Nar Bahadur Kami admitted in his deposition that he had not handed over "Doc A" to the Prosecution, in which case it is likely that the Prosecution manufactured the case against A1.

(vi) That, PW-34 the SDM Soreng at the relevant time, has admitted that Ext P-13/P.W.4, Affidavit for use of the SIDICO for a loan of ₹ 1,00,000/- (Rupees one lakh) only, in the name of Man Bahadur Tamang PW-6, Ext P-14/P.W.4 the Security Bond and Ext P-15/P.W.4 Form of Specimen Signature were attested by him. Admittedly, he was unaware of the presence of PW-6 when he

attested those documents in the discharge of his official duties in "good faith". PW-34 has given contradictory evidence with regard having stated in his evidence-in-chief that, Man Bahadur Tamang of Mabong, Singang, came to his office and complained that A1 had fraudulently obtained loan by submitting his *parcha khatiyen*, however denied receipt of any complaint from PW-6 against A1 under cross-examination. It was further contended that, none of the officials of the SIDICO have deposed about the inspection report, alleged to have been prepared fraudulently by A2 to enable A1 to obtain the loan. That, Ext P-48/P.W.23 establishes tenancy agreement between the landlord PW-23 and PW-6 where A1 is not involved. That, Ext P-65/P.W.36 Office Note Sheet of the SIDICO does not contain inspection report, upon which an adverse inference can be drawn on the Prosecution case.

(vii) PW-21 and PW-29 were witnesses to the specimen handwritings and specimen signatures of A1 and A2 being Ext P-46/P.W.21 and Ext P-47/P.W.21 respectively, but both witnesses failed to identify as to which of the Accused had signed and written on the said documents, thereby disproving the Prosecution assertion that the signatures appearing on the documents before the SIDICO were of A1 and A2. Learned Counsel submitted that conviction cannot be based on expert opinion, for which reliance was placed on **S. Gopal Reddy vs. State of A.P.**¹.

(viii) It was next contended that Ext P-33/P.W.12 is the Account Statement for Account No.SB-5190, the name of the account holder is "Mon Bdr. Tamang", whereas PW-6 spells his name as "Man Bahadur Tamang", and the Prosecution failed to

¹ (1996) 4 SCC 596

provide clarity thereof. PW-12 the Assistant Manager in the State Bank of Sikkim, Jorethang Branch, has stated that while opening Accounts, the customer has to be physically present in the Bank and in the year 2008 at the time of opening an Account, the applicant was required to produce a Voter Identity Card and passport size photograph. Pan Card and Aadhaar Card were not required. The Prosecution however only furnished scanned copies of Ext P-30/P.W.12 information given by the State Bank of Sikkim to the I.O. of the case, Ext P-31/P.W.12 withdrawal slip signed by Man Bdr Tamang, Ext P-33/P.W.12 account statement in the name of Mon Bdr Tamang, Ext P-34/P.W.12 certificate of account statement given by the Branch Manager of State Bank of Sikkim, Jorethang, in the name of Mon Bdr Tamang, Ext P-35/P.W.12 one photograph in the name of "Mon Bahadur Tamang" and not any of the original documents. The deposition of PW-12 did not establish the receipt of money by A1. He did not identify A1 as the Account holder. The conviction of A1 by the Trial Court is based on conjectures, hence the impugned Judgment and conviction be set aside as A1 deserves an acquittal, the case against him being totally devoid of evidence.

6. Learned Senior Counsel appearing for A2 contended that, A2 was the General Manager of the SIDICO at Jorethang Branch from 2006 and A2 had nothing to do with the submission of the loan application by Man Bahadur Tamang (PW-6) or anyone impersonating him, to the Head Office of SIDICO at Gangtok. The SDM, PW-34 and the officials of SIDICO Head Office dealt with all documents pertaining to the loan to which A2 was not privy. That, A2 was only responsible for the reports which he submitted as

witnessed by him on the ground. Man Bahadur Tamang allegedly filed an application before the SIDICO on 24-12-2008 for release of remaining loan amount and A2 was sent by the Head Office to visit the spot. In compliance thereof, he inspected the spot and reported the matter to the SIDICO on the basis of which the second instalment of ₹ 50,000/- (Rupees fifty thousand) only, was released on 06-01-2009. That, in fact, A2 is only a scapegoat in the instant matter as all the necessary decisions were made by the Head Office and the entire Prosecution case is sought to be foisted on A2 based on the inspection reports submitted by him. The loan amount was released to the concerned loanee by the Head Office and A2 merely recommended the release after conducting inspections as ordered, leaving it to the discretion of the Head Office to either release or not to release the loan. He was at no stage a recipient of any part of the loan amount. Drawing the attention of this Court to Paragraph 21 of the impugned Judgment, it was contended that the Court had observed therein that A2 had misled the Head Office by reporting that PW-6 was a business man having grocery shop, one taxi van and garment business in the locality, when in reality, PW-6 is a simple villager. It was urged that A2 had not misled the Head Office or persuaded them to release the loan, he had merely submitted his observations during his inspection. In any event, there is no proof of any payment made by A1 to A2 or to any other person. Ext P-65/P.W.36 was the inspection report, dated 24-12-2008, which was strangely enough not exhibited by any officer of the SIDICO, but only by the I.O. of the case. That, Exbt-4 is the entire records of the SIDICO which reveals how the loan was sanctioned and that A2 had no role

whatsoever in its sanction or release. Hence, the impugned Judgment convicted A2 erroneously and he ought to be acquitted of the charges against him on account of lack of evidence. The impugned Judgment and Order on Sentence may accordingly be set aside.

7. Learned Additional Public Prosecutor, narrating the facts of the case, urged that the application for hotel loan, Ext P-11/P.W.4, was proved by PW-4. The application is a fraudulent document submitted by A1, to SIDICO, in the name of PW-6 seeking loan of ₹ 3,00,000/- (Rupees three lakhs) only. The loan of ₹ 1,00,000/- (Rupees one lakh) only, was sanctioned in favour of "Sushma Restaurant", vide Ext P-12(colly)/P.W.4. PW-4 also proved Ext P-14/P.W.4 the Security Bond, Ext P-15/P.W.4 the Form of Specimen Signatures, Ext P-16/P.W.4 Bond of Guarantee, Ext P-17/P.W.4 Deed of Mortgage between the SIDICO and PW-6, Ext P-18/P.W.4 Non-Encumbrance Certificate, Ext P-19/P.W.4 Deed of Hypothecation of Machinery & Equipment to secure the industrial loan, Ext P-20/P.W.4 Promissory Note dated 16-12-2008, Ext P-21/P.W.4 Receipt dated 16-12-2008, Ext P-22/P.W.4 Acknowledgment of Liability of PW-6, Ext P-23/P.W.4 letter dated 15-12-2008 to Managing Director SIDICO seeking release of first instalment of loan, Ext P-24/P.W.4, letter to Managing Director SIDICO for release of second instalment. It was argued that the other documents relied on by the Prosecution have been proved by various witnesses as can be culled out from the evidence on record. The identification of the specimen signatures and handwritings of A1 have been proved by PW-21, PW-29 and PW-35 Surendra Subba who is the Junior Scientific Officer, RFSL, Saramsa,

who on forensic examination specified that the handwritings and signatures belonged to A1. The evidence of PWs 6, 7, 18, 2, 3, 21, 22, 23, 24, 25, 26, 27, 30, 34, 9, 10, 36 were discussed by Learned Additional Public Prosecutor.

8. The Trial Court taking into consideration the Prosecution evidence and more especially the evidence of PWs 6, 10, 11, 24, 26, 33, 34, 35 convicted A1 and A2 as extracted hereinabove.

9. Having heard Learned Counsel for the parties *in extenso* and having carefully perused all documents on record, the evidence on record and also the impugned Judgment and Order on Sentence, this Court is to consider, whether the findings and conclusion of the Trial Court regarding the guilt of A1 and A2 was a correct conclusion.

10. (a) Section 468 of the IPC under which both A1 and A2 have been charged deals with forgery for the purpose of cheating.

(b) Section 471 IPC under which both A1 and A2 have been charged deals with the offence of using as genuine a forged document.

(c) Section 420 under which both A1 and A2 have been charged deals with cheating and dishonestly inducing delivery of property.

(d) Section 120B of the IPC under which both A1 and A2 were charged provides for punishment of criminal conspiracy, the offence being when two or more persons agree to do or cause to be done, an illegal act or an act which is not legal by illegal means.

(e) In addition to the above, A2 was also charged with entering into criminal conspiracy with A1 for committing the above offences, with the intention of illicitly enriching himself during his period in

the office of SIDICO and thereby committed an offence under Section 13(1)(b) of the PC Act.

11. It is now essential to cull out from the evidence as to who identified A1 and A2 as the perpetrator of the offences that they were charged with and how they were identified as such.

(i) PW-2 could not identify either A1 or A2, although she stated that one person requested her to stand as witness for Exbt-2, a Receipt dated 06-01-2009, pertaining to a sum of ₹ 50,000/- (Rupees fifty thousand) only, and Exbt-3 Promissory Note, dated 06-01-2009. Both the documents bear the name of Man Bahadur Tamang, but PW-2 made no identification of either A1 or A2 as the person(s) who made her sign the documents.

(ii) PW-3, the Chief General Manager of SIDICO identified A1 as a social worker who used to bring people to the SIDICO to secure loan and A2 as the in-charge of the SIDICO, Jorethang Branch. The witness detailed the process of obtaining loan and admitted that he had disbursed the loan amount in favour of PW-6. He identified Exbt-4, as the Note Sheets, reflecting the name of PW-6 and the loan processed in his favour as the proprietor of M/s. Sushma Hotel. The loan cheque according to PW-3, is handed over only to the loanee and never to a third person. Identification of a loanee at the time of loan disbursement is done by verifying his identity with the photograph affixed in the loan application form. At the time of execution of the Promissory Note, Receipt and Acknowledgment of Liability, the loanee has to be present at the SIDICO Head Office and the documents are executed before the institution officials. Admittedly there was no departmental enquiry against A2 nor was there any adverse report against him. His

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evidence makes no reference to A1 as the person who received the loan from the Institution nor did he identify A1 as the Applicant of the loan. No evidence was given against A2.

(iii) PW-4 also an employee of the SIDICO, identified A1 as the person who accompanied the person (PW-33), whose photograph was affixed on the application form for hotel loan, Ext P-11/P.W.4, which however bears the photograph of PW-33 Chandra Kumar Rai and not of A1. At the same time, it is relevant to notice that the Account No.SB-5190 in which the loan amounts were disbursed by the SIDICO is in the name of one "Mon Bdr Tamang" and not even that of PW-6 who spells his name as Man Bahadur Tamang. Ext P-35/P.W.12 specimen signature of "Mon Bahadur Tamang" also bears the photograph of PW-33 Chandra Kumar Rai. It is not in the evidence of PW-4 or PW-3 SIDICO employees that, they had witnessed A1 submitting the loan application form. As per PW-4, A1 had only accompanied PW-33. There is no proof of A1 making over the loan documents to any official of the SIDICO. If we revert to the evidence of PW-14, the Branch Manager, CBI and peruse Ext P-36/P.W.13 it is found that PW-33 Chandra Kumar Rai had opened an account on 26-12-2012 in his own name, in the CBI, Naya Bazar Branch. The Prosecution made no effort to investigate into whether PW-33 submitted Ext P-11/P.W.4, loan document, in the name of "Man Bdr Tamang", and gave his specimen signatures for Account No.SB-5190, vide Ext P-35/P.W.12, as "Mon Bdr. Tamang". At the same time PW-33 submitted an Account Opening Form, before the CBI, Naya Bazar Branch, Ext P-36/P.W.13 in his own name. The Prosecution evidently did not investigate into these important aspects to solve

the riddles of the case. When we peruse Ext P-35/P.W.12 it is seen that the Prosecution has merely furnished a scanned copy, it is not an original document and the Trial Court has overlooked this aspect. There is no explanation as to why the original of the document was not furnished. Ext P-36/P.W.13 Bank Account Opening Form of PW-33 is also a photocopy with the endorsement "certified to be true copy". No official stamp appears below the signature nor is the signature identified by the signatory. Hence, both Ext P-35/P.W.12 and Ext P-36/P.W.13 need to be and are disregarded. It is relevant to mention that Ext P-31/P.W.12, two "Withdrawal Slips" furnished by the Prosecution as having been signed by Man Bdr Tamang are also in photocopy. There is no evidence to prove that A1 was the signatory on the documents or that he forged the signature of PW-6 or any other person nor was A2 identified as being complicit in any part described above.

(iv) PW-5 was the General Manager (Credit) at the State Bank of Sikkim, Gangtok Head Office. He merely informed the Vigilance Department that he had checked the records and found the two cheques Ext P-26/P.W.5 dated 16-12-2008 and Ext P-27/P.W.5 dated 06-01-2009 therein. Both the cheques were drawn in favour of Man Bahadur Tamang. He failed to identify A1 or A2.

(v) PW-6 the Complainant, denied knowledge of the application for loan. He was unable to identify the person whose photograph was affixed on the loan document or the signature appearing on the document or any of the documents that he was confronted with. What is striking in the evidence of PW-6 is the difference in the FIR lodged by him and the evidence given before the Court. It is essential to look into the Complaint Ext P-28/P.W.6,

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which is in the Nepali vernacular, of which the translated version, is *inter alia* recorded as follows;

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The reason is that Ranjit Ghimirey, a resident of Khanisirbung Suntaley, took my land ownership document (khatian parcha) stating he would computerise it and renew it, but has not returned it till date. Whenever I meet him and ask for it, he keeps delaying by saying he will give it. But suddenly, on 20/05/16, when a notice came from the District Collector's office in Gangtok, I came to know that he had taken out a loan from S.I.D.I.C.O. using my name. He had obtained a loan from SIDICO based on his land records. With that Notice, he met the District Collector and also the Managing Director at SIDICO and asked for all the documents made during the loan approval process and examined them. In those documents, neither was his signature present nor his photograph affixed.

.....”

He thus specifies receipt of a Notice from the Office of the District Collector, but before the Court, he has made no mention of any 'Notice' received by him from the office of the District Collector or him having met the District Collector. In fact, his evidence in Court *inter alia* is to the effect that;

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However, when he did not return my *parcha* nor give me a computerized *parcha* despite my requests I finally went to the police station to report the matter. At the police station they advised to go and make enquiries from the bank(*objected to as beyond his 161 statement*). I then went to make enquiries and finally found my *parcha* at SISCO bank at Gangtok. I did not apply for any loan neither have I signed any documents applying for any loan nor have I received any money from any bank. Hence, I lodged a complaint here in Gangtok in this regard.

.....”

Despite his claim of finding his '*parcha*' the document is not furnished by the Prosecution as part of its evidence. His cross-examination reveals that he neither went to the office of the District Collector or to the Land Revenue Department to report that A1 had taken his handwritten *parcha*. Admittedly, there was no

other person when he handed over the *parcha* to A1. Thus, two anomalies appear here, one being that he had made no mention before the Court of having received any Notice from the District Collector or having gone to the Office of the District Collector; secondly, he claims to have found his *parcha* at the Sikkim State Co-operative Bank Limited (SISCO Bank) and not the Sikkim Industrial Development and Investment Corporation Ltd. (SIDICO) when his evidence was recorded by the Prosecution. The Prosecution failed to specify from the witness as to whether it was SISCO Bank or SIDICO. These anomalies lead to doubts about the veracity of the evidence of PW-6. He was unable to specify that A1 was the person who had impersonated him and availed the loan or how in the absence of documentary evidence or identification of A1 he could conclude that A1 was the person who applied for the loan, given the fact that the photograph on the application was of PW-33 and PW-3 stated that cheques for loan are handed over only to the loanees.

(vi) PW-7, the nephew of PW-6, deposed that, PW-6 received a Notice from the 'SIDICO' to the effect that he was to repay the loan taken by him. He does not speak of Notice from the "District Collector" or from the "SISCO Bank". PW-7 reiterates the Prosecution case that, A1 had managed to take a copy of the handwritten *parcha* of his uncle, while the "original" was still in their possession. This is now a completely new twist to the Prosecution case as it is not even in the evidence of PW-6 that, the original of his "handwritten *parcha*" was with PW-7 and that A1 had taken only the photocopy. PW-7 further deposed that when they confronted A1, he assured return of the *parcha*, towards which PW-

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7 entered into an agreement with A1. It was also stated that A1 entered into a similar agreement with PW-6, where PW-7 was present along with his father Dhan Bahadur Tamang and one S. T. Tamang, PW-34. This document too found no place in the Prosecution exhibits. Ext P-29/P.W.7 was pointed out as the Agreement, but PW-7 failed to identify the signatures on the document, supposedly executed on 22-06-2013, while in his cross-examination it was revealed that in his statement to the Police, Ext P-29/P.W.7 was said to be executed on 25-06-2013. He identified his signature on Exhibit P-1(b)/P.W.7 as the Seizure Memo vide which the document was seized. No statement in his evidence establishes that he could connect the loan documents to A1. His vacillating evidence is unreliable.

(vii) Although PW-8 was the Assistant Accountant in the SIDICO, he was unable to identify A1 or A2, or connect them to the crime, nor was he aware of the documents seized by the Police.

(viii) The evidence of PW-9 lends no support to the Prosecution case as she claims to have come across A1 in 2014 only and she did not know what documents Ext P-20/P.W.4 and Ext P-21/P.W.4 were. Ext P-20/P.W.4 is the Promissory Note dated 16-12-2008 and Ext P-21/P.W.4 is the Receipt of the same date, which allegedly bear her signatures.

(ix) PW-10 was an employee in the Office of the SDM, Soreng. He was declared hostile by the Prosecution. He deposed that he was seeing A1 and A2 for the first time in Court. His evidence also was of no assistance to the Prosecution case.

(x) In a second twist to the Prosecution case, PW-11 deposed that he was the one who had prepared/scribed Ext P-

29/P.W.7, the document PW-7 claims was prepared in his presence. PW-7 however had not mentioned PW-11 as the scribe of the document. In fact, a perusal of the document reveals that the scribe of the document is one D. B. Khati PW-27. The evidence of PW-11 cannot be relied on in support of the Prosecution case, as according to him Ext P-29/P.W.7 was prepared on the request of PW-34, SDM. It is unfathomable as to why PW-34 would ask him to prepare such a document besides the evidence of PW-7 or PW-34 do not fortify his evidence. PW-34 deposed that Ext P-29/P.W.7 was not written by A1 and it was not written by PW-11 as well. Ext P-29/P.W.7, as per PW-34, made no mention of *parcha khatiyan* number. Why PW-11 would state that he prepared Ext P-29/P.W.7 is also a mystery when his name nowhere appears on the document. He claimed not to know A1 and A2 and he was seeing both of them for the first time in the Court. His evidence failed to link the offence to A1 or A2 as he claimed to have seen them for the first time in Court.

(xi) PW-12 the Assistant Manager at the State Bank of Sikkim, Jorethang Branch, identified Ext P-30/P.W.12 (in three pages collectively) as documents forwarded by him to the Vigilance Police pertaining to "Mon Bdr. Tamang". As per PW-12 while opening an account, the customer has to be physically present in the Bank. Despite such a circumstance, PW-12 was unable to identify A1 as the person who had appeared at the Bank to open the account. He claimed ignorance about the instant case, his only admission being that the account holder was "Mon Bdr. Tamang" and not "Man Bahadur Tamang". His evidence therefore fails to link A1 to the offence as it is not his evidence that A1 opened the

account in the Bank in the name of "Mon Bdr Tamang" nor did he depose anything against A2.

(xii) PW-13, the Assistant Manager of the Central Bank of India (CBI) could not identify A1 or A2. He merely accompanied PW-14, the Branch Manager, CBI Naya Bazar Branch, to the Vigilance Police to submit documents, viz., Account Opening Form, Statement of Account and a Certificate stating that the computer-generated statement is a true statement and a Production Memo. The evidence of this witness lends no weight to the Prosecution case so far as the identity of A1 and A2 are concerned.

(xiii) PW-14 the Branch Manager of the CBI, Naya Bazar Branch, was accompanied by PW-13 to submit documents as required by the Vigilance Police. The evidence of PW-14 lent no support to the Prosecution case nor was he able to establish the identity of A1 or A2, although he stated that PW-33 did not open an account during his tenure. Ext P-37/P.W.13 is the statement of Bank Account of PW-33 with account number is 2955069155 and is not SB-5190 allegedly opened by A1, besides the Banks are different. PW-14 also gave no evidence to buttress the Prosecution case that A1 was the perpetrator of the offence having impersonated PW-6 and fraudulently obtained loan in his name or that A2 had connived with A1.

(xiv) PW-15 was the Manager posted at SIDICO. The Police, in the month of September, 2016, came to the SIDICO office and seized some Files/documents from the office of the then Deputy Manager Laban Lepcha PW-4, vide Seizure Memo Ext P-10/P.W.4. The documents seized have been detailed in his evidence of which one was an application form for a hotel loan (Ext P-11/P.W.4) of

one Man Bahadur Tamang. However, he denied knowledge of the case nor he could identify A1 as the person who had submitted documents for loan in the said office.

(xv) The evidence of PW-15 lends no credence to the Prosecution case as he has not identified or deposed A1 to be the person responsible for having submitted the documents for loan. A2 finds no mention in his evidence.

(xvi) PW-16 merely forwarded certain documents of which he identified Ext P-35/P.W.12 as the specimen signatures of Mon Bdr. Tamang. There was no deposition regarding the identity of A1 or A2.

(xvii) PW-17 forwarded the Account Opening Form of A1 Ext P-42/P.W.17 (in four pages) to the Vigilance Police and asserted that he had no knowledge about the case. He was posted at Branch Manager, State Bank of India, Majitar Branch. His evidence did not link A1 to the account opening in the Jorethang Branch of the Bank nor was any evidence given in relation to A2.

(xviii) PW-18, the Officer-in-Charge, Vigilance Police Station, registered the case against A1 and A2, but admitted that both these persons were not produced before her nor did she verify the facts from the SIDICO Officers before preparing the formal FIR. PW-18 admitted that, Ext P-28/P.W.6 does not indicate as to how, when and where A1 and A2 had conspired to commit the alleged offences. She also admitted that there is no mention that A2 had obtained illegal gratification from any person including A1.

(xix) PW-19 the driver of the Cash Van of the CBI and PW-20 Manager SIDICO gave no evidence to fortify the Prosecution case.

(xx) As per PW-21, Ext P-46/P.W.21 (in twenty-one pages), are the specimen signatures and writings of A1 and Ext P-47/P.W.21 (in sixteen pages), are the specimen signatures and writings of A2. Contrarily under cross-examination it was his admission that, he could not say which of the Accused had signed on Ext P-46/P.W.21 (collectively) and which of the Accused signed and wrote on Ext P-47/P.W.21 (collectively). Again contradicting his earlier statement, he again stated that Ext P-46/P.W.21, are those of A1 and Ext P-47/P.W.21 are those of A2. His consistent vacillating evidence in my considered view makes him an unreliable witness and his evidence carries no weight to lend credence to the Prosecution case.

(xxi) PW-29 also witnessed the collection of specimen signatures and handwritings of A1 and A2 who under cross-examination stated firstly that she could not say which of the Accused had signed and written on Ext P-46/P.W.21 and Ext P-47/P.W.21. She again stated that Ext P-46/P.W.21 was that of A1 and Ext P-47/P.W.21 was that of A2. In my considered view, since this witness also gave vacillating evidence, she is not a reliable witness. In any event, it is now settled law that it would be extremely hazardous to condemn the Appellants merely on the strength of opinion evidence of handwriting expert.

(xxii) PW-23 was the owner of the building where the purported business was to be located as per the loan documents. According to him, A1 had come to his residence requesting for issuance of NOC in his capacity as house owner, for obtaining a Trade Licence. The said NOC was brought by A1 who asked PW-23 to sign on it, which he complied with. However, having said that,

he again denied having signed on the document and stated that though his name appears on the document the signatures are not his. Under cross-examination, he claimed that he was not shown any NOC in the Court. He admitted that in his statement to the Police he made no mention of A1 coming to his house for a second time with a prepared NOC and a request to sign on it nor did he state to the Police that he had been shown Ext P-48/P.W.23. It was his next admission that he had never entered into any agreement with A1 nor did he have any document to show that A1 is his tenant. That, although Ext P-48/P.W.23 is purportedly an agreement between one Man Bahadur Tamang and himself (PW-23), he did not sign on the said agreement, although the Prosecution had exhibited this document. Reverting pertinently to the evidence of PW-15, it is seen that Ext P-48/P.W.23 was not seized from the SIDICO office nor has it been mentioned in the evidence of PW-4. On further cross-examination by A2, PW-23 denied having signed on Ext P-48/P.W.23 and he had affixed his signature on a document (NOC) of which he did not retain a copy. This witness as can be gauged from his vacillating evidence appears to be a witness in utter discombobulation. The Prosecution was unable to explain as to how and from where Ext P-48/P.W.23 was obtained and seized as PW-23 has not deposed that the tenancy agreement was seized from him. It is also not in the evidence of any other witness that the tenancy agreement was taken from the office of the SIDICO. The existence of this document is, as already observed, is shrouded in mystery.

(xxiii) PW-24 Nar Bahadur Kami, is said to have been the 'security' for the loan allegedly obtained by A1 impersonating PW-

6. However, on showing PW-24 the documents Ext P-14/P.W.4 the Security Bond (undated document) and Ext P-16/P.W.4, a Bond of Guarantee, dated 05-12-2008, he denied that the signature on the photograph Ext P-14(a) affixed on the Security Bond were his. He had stated to the Police that Man Bahadur Tamang had told him that A1 had taken his handwritten *parcha*, but such document was not shown to him in the Court. His further evidence indicated that, he had received Notice from the Bank as the surety of Man Bahadur Tamang, who had defaulted in his loan payment, but the alleged Notice was not shown to him in the Court.

(xxiv) PW-25 is another employee of the SIDICO who identified A2 also as an employee of the SIDICO, but he did not know A1. His evidence did not link A2 to the Prosecution case.

(xxv) PW-26, whose photograph allegedly appears on Ext P-14/P.W.4, Security Bond, admitted that the photograph was his, but the name mentioned under the photograph was of Nar Bahadur Kami (PW-24) whom he did not know. Lending another interesting facet to the Prosecution case, PW-26 stated that, he had given his photograph to one Lhendup Lepcha (PW-22) and Prem Dhoj Rai (PW-32) in 2004-05 (in his evidence-in-chief, the period is mentioned as "2006-07"). He also admitted that in his statement to the Police that he told them that he had not given his photograph to A1 and he did not have any knowledge about this case. That, he had seen A1 for the first time in the Court after having seen him during his childhood but admitted that he was unsure whether A1 was the same person. He could not identify A2.

(xxvi) PW-27 admitted that he had signed on Ext P-29/P.W.7 and that the document was regarding certain landed property

where he was made to sign as a witness. He was unaware as to who had prepared the document and he left after signing the document, but disclosed that Man Bahadur Tamang (PW-6) was not present when he went to sign the document. He has not mentioned A1 and A2 as perpetrators of the offences.

(xxvii) PW-28 was an employee of the United Bank of India, Jorethang Branch and who as per the requisition of the Vigilance Police forwarded the documents pertaining to A1 which included his original Account Opening Form and other documents. Since he is unaware of the details of the case, his evidence was of no assistance to the Prosecution case. His evidence shed no light on the role of A1 and A2.

(xxviii) PW-30 and PW-31 are the witnesses to the specimen signatures/handwritings of PW-33, being Ext P-57/P.W.30 which are not relevant for the present purposes, as PW-33 is not an Accused in the matter. PW-30 did not know A1 or A2. PW-31 knew them only in his official capacity as a Police personnel.

(xxix) PW-32 is the person to whom PW-26 had handed over his passport size photograph. In his evidence, PW-32 stated that under the instructions of the Village Panchayat Deo Kumar Rai, he along with Lhendup Lepcha (PW-22), collected passport size photographs and copy of Voter Identity Cards from the co-villagers of Pipaley and surrounding areas. He had also collected such passport size photograph and Voter Identity Card of Bhanu Bhakta Kami (PW-26). He deposed that he had not given the passport size photograph of PW-26 to A1. He also stated to the Police that he did not know A1, nor was he shown any photograph by the Police, during the course of investigation. It thus appears that this

witness was unable to identify or establish that the photograph of PW-26, affixed on Ext P-14/P.W.4, was handed over by him to A1. A2 was not identified by him.

(xxx) PW-33, whose photograph was affixed on the loan document Ext P-11/P.W.4 and on the scanned document Ext P-35/P.W.12, stated that, he had given his photograph to Man Bahadur Tamang PW-6 and Mani Kumar Tamang PW-7, when they told him that they are going to meet the local MLA. The Prosecution did not deem it necessary to question him as to why he had given his photograph to PW-6. The witness asserted that the photograph affixed in Ext P-11/P.W.4 was given by him to PW-6 and PW-7 and that he was seeing A1 and A2 for the first time in the Court. He admitted to not having any knowledge about the case. The documents Ext P-19/P.W.4, Ext P-20/P.W.4, Ext P-21/P.W.4, Ext P-22/P.W.4, the loan documents, were shown to the witness in the Court room, having been allegedly scribed by him. However, he asserted that he had not made any application impersonating PW-6 before the SIDICO on 15-12-2008 and 06-01-2009 marked as Ext P-23/P.W.4 and Ext P-24/P.W.4. He also denied that the signatures on the documents were his signatures or that any loan instalment was received by him vide Ext P-26/P.W.5. His photograph appears on the above mentioned document. The Prosecution has failed to establish that A1 was given his photograph or that A1 had thereafter prepared the alleged false and forged documents.

(xxxi) PW-34, the SDM of the concerned jurisdiction at the relevant time stated that A1 came to his office and introduced himself as Chairman of the Scheduled Caste Community. He

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returned a second time with certain documents pertaining to loan, and that those documents were sent to PW-34, through regular official process. PW-34 signed on the documents in "good faith" without doubting the intentions of A1, although admittedly he does not work on the basis of personal relationships. His above statements as evident are contradictory. He admitted that the signatures shown on Ext P-13/P.W.4, Ext P-14/P.W.4, Ext P-15/P.W.4, Ext P-18/P.W.4 up to Ext P-22/P.W.4 were his signatures. That, Man Bahadur Tamang PW-6 came to his office during his tenure as SDM, Soreng and informed him that A1 had fraudulently obtained loan by submitting the *parcha khatiyen* of PW-6. They accordingly went to look for A1 and on tracing him reprimanded him, upon which he promised to return the *parcha khatiyen* of PW-6 within a month, vide Ext P-29/P.W.7. He admitted to not lodging any complaint against A1. Contradicting his earlier statement of receipt of complaint from PW-6, he again stated that he did not receive any complaint from PW-6. He also did not mention to the Vigilance Police the reason as to why he did not lodge a complaint against A1. According to PW-34, when a tenancy agreement is registered the landlords and the tenants are to be present in the Office and when a deed of mortgage is registered the mortgager is required to be present in the Office. He did not mention to the Vigilance Police that A1 had impersonated Man Bahadur Tamang PW-6. His cross-examination by A2 revealed that, PW-6 was aware of every fact pertaining to the case in the year 2013 itself. It may be noticed here that the FIR however came to be lodged in the year 2016 and no allegations were made by PW-6 against any official of SIDICO much less A2, regarding any conspiracy. His

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evidence also revealed that the tenancy agreement dated 27-11-2008 was registered by him and such registration can be done only in the presence of the parties to the said agreement. This evidence is important as PW-23 has denied signing on any document. It was his further deposition in the cross-examination by A2 that during the registration of the tenancy agreement, the parties said to be Tilak Lohagun (PW-23) and Man Bahadur Tamang (PW-6), were present. He claimed that Ext P-29/P.W.7 was written by A1, this is in contradiction to the evidence of other PWs who have identified PW-27 as the scribe. Having carefully considered his evidence there appears to be no evidence linking the offences to A1 and A2 under which they were charged. His evidence is vacillating on several aspects and thereby fails to inspire the confidence of the Court. His evidence regarding registration of tenancy agreement between PW-23 and PW-6 demolishes the Prosecution case which alleged that A1 was responsible for the creation of the document.

(xxxii) PW-35 is the Handwriting Expert who has had over eleven years experience in examining various documents and at the time of his evidence was posted as Junior Scientific Officer, Questioned Documents Division, RFSL at Saramsa. After examining the documents that were forwarded to him PW-35 deposed that the person who wrote blue enclosed standard signatures stamped and marked as S32 to S52 and A12 to A17, also wrote the red enclosed questioned signatures similarly stamped and marked as Q7 to Q17. Ext P-46/P.W.21, in twenty-one pages, contains S32 to S52 which are said to be the specimen signatures/handwritings of A1. Ext P-42/P.W.17, in six pages, contains A12 to A17 which are said to be the specimen signatures

of A1. As per the Expert, the person who wrote in the above Exhibits also wrote Q7 to Q17. Q7 appears in Ext P-13/P.W.4, Q8 appears in Ext P-14/P.W.4, Q9 appears in Ext P-14/P.W.4, Q10 appears in Ext P-16/P.W.4, Q11 appears in Ext P-29/P.W.7, Q12 appears in Ext P-48/P.W.23, Q13 appears in Ext P-43/P.W.17 (the document is in photocopy), Q14 appears in Ext P-44/P.W.4 (the document is in photocopy), Q15 appears in Ext P-17/P.W.4, Q16 appears in Ext P-17/P.W.4, Q17 appears in Ext P-18/P.W.4. Having given his reasons on Ext P-58/P.W.35 and Ext P-59/P.W.35, he concluded that A1 had written and signed on the above-mentioned documents. The Trial Court in Paragraphs 30, 31, 32, 33 and 34 has given reasons as to how he had concluded that A1 had obtained the loan in the name of PW-6 and withdrawn it and A2 had aided A1 to cheat SIDICO by preparing and submitting a false inspection report.

(xxxiii) A1 for his part denied that the signatures appearing in Ext P-19/P.W.4 Hypothecation document, Ext P-20/P.W.4 Promissory Note and Ext P-21/P.W.4 Receipt of ₹ 50,000/- (Rupees fifty thousand) only, dated 16-12-2008, Ext P-22/P.W.4 acknowledgment of liability signed by Man Bdr. Tamang, were scribed by him. He denied having made an application impersonating Man Bahadur Tamang PW-6 before the SIDICO and denied receiving any amount of the loan.

12. Having given due consideration to the entire evidence as extracted hereinabove, I am of the considered view that there is no direct evidence whatsoever to link the offence to A1 and A2. A1 and A2 as emerges from the evidence detailed (*supra*), have not been identified as perpetrators of the offence. No evidence points

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to their connivance at any stage. In such circumstances, the Court is to consider circumstantial evidence if any appearing against them to reach a conclusion for their conviction. The principles governing circumstantial evidence as observed by the Supreme Court in ***Vijay Thakur vs. State of Himachal Pradesh***² is that;

"20. There is a reiteration of the same sentiment in *Manthuri Laxmi Narsaiah v. State of A.P.* [(2011) 14 SCC 117] in the following manner: (SCC p. 119, para 6)

"6. It is by now well settled that in a case relating to circumstantial evidence the chain of circumstances has to be spelt out by the prosecution and if even one link in the chain is broken the accused must get the benefit thereof. We are of the opinion that the present is in fact a case of no evidence."

21. Likewise, in *Mustkeem v. State of Rajasthan* [(2011) 11 SCC 724] this Court observed as under: (SCC p. 731, paras 24-25)

"24. In a most celebrated case of this Court, *Sharad Birdhichand Sarda v. State of Maharashtra* [(1984) 4 SCC 116] in para 153, some cardinal principles regarding the appreciation of circumstantial evidence have been postulated. Whenever the case is based on circumstantial evidence the following features are required to be complied with. It would be beneficial to repeat the same salient features once again which are as under: (SCC p. 185)

'(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established;

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(iii) The circumstances should be of a conclusive nature and tendency;

(iv) They should exclude every possible hypothesis except the one to be proved; and

(v) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.'

25. With regard to Section 27 of the Act, what is important is discovery of the material

² (2014) 14 SCC 609

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object at the disclosure of the accused but such disclosure alone would not automatically lead to the conclusion that the offence was also committed by the accused. In fact, thereafter, burden lies on the prosecution to establish a close link between discovery of the material object and its use in the commission of the offence. What is admissible under Section 27 of the Act is the information leading to discovery and not any opinion formed on it by the prosecution." (emphasis supplied)

It is settled position of law that suspicion, however strong, cannot take the character of proof." [emphasis supplied]

These principles also find place in **Shivaji Sahabrao Bobade and Another vs. State of Maharashtra**³ and **Sharad Birdhichand Sarda vs. State of Maharashtra**⁴.

13. The Trial Court while convicting A1 and A2 was of the view that A1 had fraudulently obtained the loan by submitting *parcha/khatiyan* of PW-6. He had obtained the signature of PW-34 on various documents required for obtaining the loan, i.e., Ext P-13/P.W.4 Affidavit, Ext P-14/P.W.4 Security Bond, Ext P-15/P.W.4 Form of Specimen Signatures of Man Bahadur Tamang, Ext P-16/P.W.4 Bond of Guarantee, Ext P-17/P.W.4 Deed of Mortgage, Ext P-18/P.W.4 Non-Encumbrance Certificate and Ext P-19/P.W.4 Hypothecation document. As can be seen these documents have been identified by PW-4. PW-4 is an Officer of the SIDICO (General Manager, Jorethang Branch) who has since retired. In his evidence-in-chief, he has not stated or identified A1 as the person who had brought the said documents to his office for the purpose of obtaining the loan, neither has he said that A2 was responsible for submitting the documents. Under his cross-examination by A1, on a suggestion put to him, he has asserted that PW-6 had come to the office at the time of processing the File. He stated that "*It is*

³ (1973) 2 SCC 793

⁴ (1984) 4 SCC 116

not a fact that Man Bahadur Tamang had not come at the time of processing the file. It is true I do not know who received the loan amount of Rs.1,00,000/-. It is not a fact that the applicants had not come to me along with the file. It is true in my statement to the police I have mentioned that one Man Bahadur Tamang had approached the M.D and G.M at the Head Office, Gangtok, where I was working at the time." There is thus no evidence against A1. The cross-examination of the witness by A2 also did not extract any evidence against A2. The evidence of PW-4 indicates that PW-6 had also visited the office of the SIDICO. That having been said, the Trial Court also found that PW-6 told PW-34 that A1 had taken his *parcha/khatiyan*. Subsequently, Ext P-29/P.W.7 was prepared on 22-06-2013 wherein A1 undertook to return the *parcha/khatiyan* within a month. PW-7, according to the Trial Court, confirmed that A1 had signed on the document, but a perusal of Ext P-29/P.W.7 does not bear the signature of A1 nor is it marked before the Trial Court. The evidence of PW-7 itself is riddled in confusion as already discussed in the preceding Paragraph.

(i) It has also been observed at Paragraph 19 of the impugned Judgment that PW-6 went to the Police Station to report the matter and was advised by the Police personnel to make enquiries at Banks and he thus found his land *parcha* deposited at the 'SISCO' Bank, Gangtok. Thereafter, he lodged the FIR Ext P-28/P.W.6. PW-6 in his evidence has reiterated these facts. However, there are anomalies in the facts stated before the Court and those that appear in the FIR Ext P-28/P.W.6 as already discussed in Paragraph 11(v) of this Judgment.

(ii) Bearing the facts of the Prosecution case in mind which to prevent prolixity are not being reiterated, if we turn to Ext P-30/P.W.10, it is evident that PW-6 had already been issued a computerised *parcha* on 31-07-2007.

(a) This leads to doubts about the claims of PW-6 that A1 sought his handwritten *parcha* to convert it into a computerised one as the loan was only applied for in 2008.

(b) On the heels of this doubt arises, another doubt, which pertains to the fate of the handwritten *parcha*.

(c) It is the consistent case of the Prosecution, bolstered by the evidence of PW-6, that, the handwritten *parcha* was taken by A1, but the Prosecution has failed to seize or tender in evidence the said document.

(d) I.O. PW-36 under cross-examination admitted that, it is not in the records of the case and volunteered to clarify that in fact PW-6 was already in possession of a computerised *parcha* when A1 had allegedly taken the document from him.

(e) This however is not elucidated or clarified in the evidence of PW-6 who has been consistent in his stand that the handwritten *parcha* was taken by A1 on the ground *inter alia* that, handwritten *parchas* are now redundant.

(f) Added to the above contradictions, PW-6 deposed that Exbt P-30/P.W.10, the computerised *parcha* is not the *parcha* that was allegedly handed over by him to A1 as he has stated that "*It is true that when I went to the police and to the bank I could not trace my handwritten parcha. It is true that I do not know where the said handwritten parcha is at present.*"

(iii) Thus, it emerges that the document “handwritten *parcha*” which is the backbone of the Prosecution case has not even been furnished by the Prosecution and the evidence of PW-36 is contradictory to the evidence of PW-6 in the context of the document.

(iv) The Trial Court in Paragraph 20 then observed that, fingers would point at A1 accordingly and proceeded to conclude that the inspection report prepared by A2 was a false report with the purpose of misleading the Head Office, as in his inspection report dated 30-11-2008, A2 recorded *inter alia* that PW-6 was a business man having grocery shop, one taxi van and garment business in the locality, when in reality PW-6 is a simple villager. The Trial Court has come to his conclusion sans any evidence to establish that PW-6 was a simple villager and not a business man as described in the inspection report. There are no reason enumerated to establish how fingers pointed at A1, the Trial Court has failed to establish how in the absence of direct evidence the circumstantial evidence indicated A1 and A2 as the offenders.

(v) In Paragraph 22 of the impugned Judgment, it was observed that “*Armed with a false inspection report (supra), an application for “hotel loan” was filed on 3rd December, 2008 in the name of PW-6 as s proprietor of “Shusma Hotel”, but with a photograph of PW-33. It is palpable from the face of the said application (Exhibit-P11/PW-4) itself that the motive of the ‘applicant’ was to swindle SIDICO and in the process cheat PW-6.*” Here the Trial Court sidestepped the pivotal point by mentioning which person was the perpetrator of the offence by addressing him as an ‘applicant’ and not specifying who the person was. The Court

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did not mention that the applicant was A1, revealing the confusion of the Court itself. Merely because A1 frequently visited the office of PW-10 and also obtained the computerised *parcha* does not point to his complicity in the crime in the absence of circumstantial evidence connecting the crime to him. The handwritten *parcha*, was never recovered from A1 or from any other person and PW-7 has added confusion to the matter by stating that A1 had taken a copy of the handwritten *parcha* of his uncle while the original was still in their possession.

(vi) The Trial Court also observed in Paragraph 25 of the impugned Judgment that an affidavit in the name of PW-6 has the purported signature of PW-24 as also the Security Bond but with the photograph of PW-26 and land *parcha* of PW-24. The Bond of Guarantee also has the signature of PW-24. The Trial Court thus concluded that the common element that exists in all these documents is the presence of the signatures of A1. As apparent from the observations (*supra*) of the Trial Court, the signatures of PW-24 also appear on several documents. Hence, if the appearance of the signature of A1 in the documents links him to the crime the Trial Court has failed to explain the role that could be attributed to PW-24 who has also signed on the various documents. In other words, if the logic for convicting A1 is based on his signature on the documents, PW-24, in my considered view, would also be guilty of the same offence in view of the above circumstance. It was also observed that first instalment of the loan was released through State Bank of Sikkim, Jorethang Branch and the evidence of PW-3 the former Chief General Manager of the Bank would reveal that A1 would come to their office with other

persons for securing loans. The evidence of PW-3, in my view, reveals that A1 would consistently accompany persons for securing loan. However, no witness has come forward to state that A1 submitted the loan documents and the sanctioned loan amounts were received by A1, neither the SIDICO Office nor the Bank Officers threw light on this aspect. PW-3 has nowhere stated that A1 took the loan amount.

(vii) The Trial Court has also not come to a conclusive finding as evident from Paragraph 26 of the impugned Judgment that A1 was responsible for receiving the loan amounts. The Trial Court in Paragraph 28 of the impugned Judgment observed that A1 obtained the first instalment of loan on 16-12-2008. However, no reason has been given as to how the Trial Court came to the finding that it was A1 who had obtained the said loan amount, considering the fact that PW-9, who has been mentioned in the said Paragraph of the impugned Judgment as having signed on Exbt P-20/P.W.4 (Promissory Note dated 16-12-2008) and Exbt P-21/P.W.4 (Receipt dated 16-12-2008), has clearly stated that she came to know A1 in the year 2014, whereas the loan was sanctioned in the year 2008. PW-2 who signed on Exbt-2 a Receipt dated 06-01-2009 pertaining to a sum of ₹ 50,000/- (Rupees fifty thousand) only, and Exbt-3 Promissory Note dated 06-01-2009 failed to identify A1 as the person who requested her to sign on the documents as witness. The Trial Court also found that A1 went to PW-23 to obtain NOC for Trade Licence which PW-23 signed, on the paper prepared by A1, but he refused to sign on the tenancy agreement. This has to be considered in light of the evidence of

and

PW-34 who has stated under cross-examination by Accused No.2 as follows;

"..... It is true that the tenancy agreement dated 27.11.2008 was registered by me. It is true that it is only in the presence of the parties a tenancy agreement is registered. It is true that during the registration of the said tenancy agreement the parties said to be Tilak Logun and Man Bahadur Tamang were present (*witness volunteers to say that all these documents were processed and prepared by his Peshkar*).

....." [emphasis supplied]

(viii) In Paragraph 29 of the impugned Judgment, the Trial Court also observed that A2 recommended the release of the second tranche of the loan and that A1 obtained the loan and withdrew the money in the name of PW-6. However, this is not fortified by any reasons by the Trial Court. There is no reason as to how the Trial Court observed that the inspection report was false. Hence, the finding of the Trial Court in Paragraph 30 of the impugned Judgment is not tenable. The Trial Court thereafter relied on the evidence of PW-35, the handwriting expert. In this context, the evidence of PW-21, PW-29 and PW-35 have already considered and examined by this Court and I find no reason to rely on their evidence. The Supreme Court in **Magan Bihari Lal vs. The State of Punjab**⁵ observed as follows;

"7. 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 precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U.P.* [AIR 1957 SC 381] that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied

⁵ (1977) 2 SCC 210

and

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upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad Mishra v. Md. Isa* [AIR 1963 SC 1728] 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 v. Subodh Kumar Banerjee* [AIR 1964 SC 529] where it was pointed out by this Court that experts 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 v. State of M.P.* [AIR 1967 SC 1326] and it uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.”

(ix) In Paragraph 34 of the impugned Judgment the Trial Court was of the view that the loan was obtained by A1 in collusion with A2. That, such agreement to commit the offence can be proved by direct evidence or by circumstantial evidence or by both. However, the Trial Court has failed to discuss how the circumstantial evidence connected the dots to fasten A1 or A2 with the offences as charged.

(x) There is no investigation as to why the photograph of PW-33 appears on the loan documents and who was the person responsible for opening the Bank Account which also bore the photograph of PW-33. PW-24 had specifically deposed that he had made over his photograph to PW-6 and PW-7 and not to A1, but this aspect also did not merit any investigation from the IO.

(xi) The Trial Court failed to give weight to the evidence of PW-3, the Chief General Manager of SIDICO, Jorethang Branch, who stated unequivocally that at the time of execution of loan documents the loanee is required to be present and identification

of loanee at the time of disbursement of loan is by verification of his photograph affixed in the loan form. It is not in his evidence that A1 was present with the loan documents. In fact his evidence would point to the presence of PW-6 at the time of application and disbursement of loan in adherence to the official procedure prescribed. Admittedly, the photograph on the loan form is of PW-33 and as already remarked hereinabove, no investigation on this aspect has been conducted. PW-3 has not deposed that A1 came to the office at the time of disbursement of loan.

(xii) Apart from that, so far as A2 is concerned, the entire allegation against him is that he aided A1 to obtain the loan falsely by preparing a false inspection report. However, the evidence nowhere indicates that he was in connivance with A1 or that he ever received any money from the loan alleged to have been falsely obtained. The inspection report was prepared by him in his official capacity. If A2 has gone to the place for inspection and found the circumstances as mentioned in his report, it cannot be faulted. There is no evidence to indicate that the I.O. visited the spot inspected by A2 and found it to be otherwise. There is no evidence whatsoever to indicate that he received any money from the loan disbursed, from any source much less A1, the question of him having enriched himself and therefore attracting the offence under 13(1)(c) and (d) of the PC Act does not arise.

14. For the foregoing reasons, I am of the considered view that the conviction of A1 and A2 by the Trial Court for the offences that they were charged with was erroneous. There are no chain of circumstances which connect the offences to A1 and A2 as per the principles expounded in **Vijay Thakur** (*supra*). Suspicion however

strong cannot be the basis for a conviction nor can there be moral conviction. The Prosecution case requires proof beyond reasonable doubt before convictions can be handed out.

15. Consequently, the impugned Judgment and the impugned Order on Sentence of the Learned Trial Court in ST (Vig) Case No.02 of 2019 (*State of Sikkim vs. Ranjit Ghimirey and Another*) are accordingly set aside and quashed.

16. Both Appeals are allowed.

17. A1 and A2 are acquitted of all offences charged with.

18. A1 is on bail vide Order of this Court, dated 28-05-2024, in I.A. No.02 of 2024 in Crl. A. No.10 of 2024 (*Ranjit Ghimirey vs. State of Sikkim*).

(i) A2 is on bail vide Order of this Court, dated 06-05-2024 in I.A. No.02 of 2024 in Crl. A. No.11 of 2024 (*Madan Subba vs. State of Sikkim*).

(ii) Both of them are discharged from their respective Bail Bonds.

19. Fine, if any, deposited by the Appellants (A1 and A2) in terms of the impugned Order on sentence, be reimbursed to them.

20. No order as to costs.

21. Copy of this Judgment be forwarded forthwith to the Learned Trial Court along with its records.

(Meenakshi Madan Rai)
Judge

06-08-2025

Approved for reporting : **Yes**