A STATE THROUGH SPE & CBI, AP

v.

M. KRISHNA MOHAN AND ANR.

OCTOBER 12, 2007

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[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Penal Code, 1860:

C *ss. 409, 420, 467, 477-A r/w 120-B—Forgery and misappropriation of bank loans—Bank Manager and Field Officer in conspiracy with each other sanctioned and disbursed loans in names of fictitious persons—Trial Court holding both guilty and sentencing them—Acquittal by High Court—HELD: Prosecution has brought ample* D *material on record which led to only one conclusion that accused committed the offences—Exoneration of one of the accused in departmental inquiry initiated only against him having concluded before police investigation stated in the case, would be of no avail as Inquiry Officer did not have benefit of the evidence that was made* E *available in the criminal proceedings—Besides, the inquiry report was not brought on record and factum of exoneration in departmental proceedings was taken as a defence, it was for the accused to bring on record the relevant material, which was not done—High Court also erred in purporting to hold that specimen finger print and handwritings* F *could not have been taken from accused—ss. 5 and 6 of Identification of Prisoners Act, clearly provides for such a contingency—High Court completely misdirected itself in passing a judgment of acquittal—Judgment of High Court set aside—Prevention of Corruption Act, 1944—ss. 5(1) and 5(2)—Code of Criminal Procedure, 1973—Appeal* G *against acquittal—Identification of Prisoners Act, 1920—ss. 5 and 6.*

Prevention of Corruption Act, 1947:

s. 5(1) r/w s.5(2), proviso—Bank Manager and Field Officer forging loans in names of fictitious persons—Both held guilty by trial

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court—Acquittal by High Court—HELD: Bank Manager completing all formalities required to be complied with for grant of loan including obtaining appraisal report from Field Officer, sanction and disbursement of loan on date of filing of loan application itself—Entire prosecution relating to forgery and misappropriation having been attributed to the Manager, and he having used the appraisal reports prepared by Field Officer, a case is made out to invoke the proviso appended to sub-s.(2) of s.5 in the case of Field Officer—Therefore, while upholding conviction and sentence awarded by trial court as against the Manager, sentence of rigorous imprisonment of three months is imposed on Field Officer—Penal Code, 1860—ss. 409, 420, 467 and 477-A r/w 120-B IPC.

Code of Criminal Procedure, 1973:

Appeal against acquittal—Jurisdiction of appellate Court—HELD: an appellate court, while entertaining an appeal against acquittal, would be entitled to consider the evidence brought on record and arrive at its own conclusion—Interference with a judgment of acquittal may not be made when two views are possible to be taken but when only one view is possible to be taken, appellate court would not hesitate to interfere with judgment of acquittal—In the instant case no two views are possible to be taken—Accused were rightly held guilty of the offences charged—High Court misdirected itself in passing judgment of acquittal—Judgment of High Court set aside—Penal Code, 1860—ss. 409, 420, 467, 477-A r/w s.120-B—Prevention of Corruption Act, 1947—ss. 5(1), (2).

Respondent A-1 and respondent A-2, who were Manager and Field Officer respectively of the appellant Bank, were prosecuted under ss. 409, 420, 467 and 477-A read with s.120-B IPC and s.5 read with s.5(2) of the Prevention of Corruption Act, 1947. The allegations against them were that during the period 7.12.1984 to 14.8.1986, they conspired with each other in matter of sanctioning and disbursing 6 Crop Loans of Rs.5000/- each in the names of fictitious persons by forging signatures and thumb impressions of proposed borrowers in documents resulting

A in misappropriation of the proceeds of Rs.30,000/-. The trial court held both the accused guilty of the offences charged and sentenced both of them to rigorous imprisonment for six moths. It rejected the plea of respondent A-2 that in view of the departmental proceedings against him resulting in his exoneration he was entitled to be acquitted. On
B appeal, the High Court acquitted the accused observing, *inter alia*, that the procedure adopted for obtaining finger prints being contrary to fundamental rights of the accused, the same was not admissible in evidence; that neither the Bank received any complaint from loanees nor did the prosecution bring any corroborative material on record.

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In the instant appeals filed by the Bank, it was contended for respondent A-2 that he merely prepared the appraisal report and he was not involved in any forgery; that he joined the service only in 1984 and was transferred on or about 14.8.1986, and subsequent renewals
D of loans having been prepared in 1987, he was entitled to acquittal.

Allowing the appeals, the Court

HELD: 1.1. In the instant case, evidently, the formalities required to be complied with for grant of loan, appraisal report recommendation
E prepared by respondent A-2 and sanction and disbursement of loan by respondent A-1 were completed on the very same day on which application for grant of loan was filed. It has furthermore been brought on record that PW-21 and PW-22 on whose behalf loan was applied, were known to respondent A-1. They stated that they were residents
F of a district different than that shown in their applications. This clearly establishes that the transactions were manipulated by respondent A-1. PW-3, in her deposition, in no uncertain line, stated that all transactions right from application to disposal took place in the afternoon of a day and all the documents used to be processed during the lunch hour,
G whereas as per to the procedure, the disbursement of loan could take place only upon proper verification thereof. The modus operandi of respondent A-1 appeared to be that he had affixed his own thumb impression instead of those of the loanees. Upon sanction of the said loan, the accountant concerned paid the amount of loan to accused A-

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1. The said loans were also renewed for the years 1986 and 1987. A
[Para s 12, 14, 24 and 25] [581-C; 582-B-C-D; 584-B-C]

1.2. The finger print expert (PW-17), in his evidence, proved that specimen fingerprints tallied with the disputed fingerprints. PW-17 is a qualified and experienced fingerprint expert. There is no reason to discredit his testimony. Apart from the fingerprints, the prosecution also B obtained the specimen handwritings of respondent A-1. Handwritings on the said loan documents/applications for grant of loan was found to be that of accused No.1. The High Court also committed a manifest error in purporting to hold that the specimen fingerprints and handwritings could not have been taken from respondent A-1. Sections 5 and 6 of C the Identification of Prisoners Act, 1920 clearly provides for such a contingency.

[Paras 15, 17, 18, 34 and 35] [582-E, G; 583-A-B; 586-F-G]

State of Bombay v. *Kathi Kalu Oghad,* AIR (1961) SC 1808, relied D on.

1.3. It may be true that there was no documentary evidence to show that the amount had actually been paid in cash to the respondent A-1. But then no documentary evidence would be available as it was for the E respondent A-1, as Manager of the Bank, to hand over the amount in cash to the loanees upon receiving the same from PW-3. Besides, PW-5 also stated that debit vouchers (Ext. P-6) contained only one stamp showing as cash paid but it did not contain his signature, although it purported to have been shown to be his. Ext. P-6 was, therefore, a forged F document. [Paras 20 and 21] [583-E-F, D]

1.4. PWs 3 and 5 who had been working in the same branch of the bank with the respondents have proved the procedure adopted in the matter of grant of loan. There cannot, therefore, be any doubt whatsoever that ample materials have been brought on record by the G prosecution which led to only one conclusion that the accused were responsible therefor. [Para 22] [583-G]

1.5. It may be that no act of forgery and misappropriation has been attributed to respondent A-2, but he was the one who had prepared the appraisal report. After preparation of such appraisal report, the loan H

A amounts were sanctioned and the amount of loan purported to have been paid to the loanees and, therefore, he was also guilty of commission of the said offences. [Para 23] [583-H; 584-A]

2. The High Court purported to have laid emphasis on exoneration B of respondent A-2 in departmental enquiry. The departmental enquiry was initiated only against respondent A-2 and was completed even before the police investigation in the case started. The enquiry officer did not have the occasion to consider all the materials brought on record by the prosecution which clearly established the involvement of the C respondents. Exoneration of respondent A-2 in the departmental proceedings cannot, therefore, lead to the conclusion that he was not guilty of commission of the offences wherefor he was charged. Furthermore, the enquiry report has not been brought on record. Besides, the factum of exoneration of respondent A-2 in the D departmental proceedings was raised by way of defence. It was, therefore, obligatory on his part to bring on record all the relevant documents, including the findings of the Enquiry Officer.

[Paras 27, 28, 29 and 33] [574-E-F; 584-G-H; 585-A; 586-D-E]

P.S. Rajya v. *State of Bihar,* [1996] 9 SCC 1, distinguished.

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State of Haryana v. *Bhajan Lal,* [1990] 3 SCR 259=[1992] Supp. 1 SCC 335 and *Superintendent of Police (CBI)* v. *Deepak Chowdhary & Ors.,* [1995] 6 SCC 225, referred to.

F 3. The High Court, therefore, completely misdirected itself in passing a judgment of acquittal in favour of the respondents. The trial judge had assigned cogent reasons in support of its findings. The High Court did not meet the said reasoning. The impugned judgment of the High Court cannot be sustained. [Paras 26 and 37] [584-D; 589-B]

G 4. The Court is not oblivious of the fact that presumption of innocence is a human right and when an accused is acquitted by a court, such presumption becomes stronger. It is, however, a trite law that an appellate court, while entertaining an appeal from a judgment of acquittal, would also be entitled to consider the evidences brought on

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record by both the prosecution and the defence and arrive at its own decision. Interference with a judgment of acquittal may not be made when two views are possible to be taken, but when on appraisal thereof, only one view is possible, the appellate court would not hesitate to interfere with the judgment of acquittal. In this case, the Court is firmly of the view that no two views are possible to be taken.

[Paras 37 and 38] [589-B, D, E]

State of Haryana **v.** *Sher Singh & Ors.,* **[2002] 9 SCC 356;** *Narender Singh & Anr.* **v.** *State of M.P.,* **[2004] 10 SCC 699 and** *Budh Singh & Ors.* **v.** *State of U.P.,* **[2006] 9 SCC 731, referred to.**

5. The entire prosecution case relating to charges of forgery and misappropriation has been attributed to respondent A-1 alone. Thus, a case has been made out to invoke the proviso appended to sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 in the case of respondent A-2. Furthermore, he worked in the bank for a short period and was still undergoing probation. Forgery and misappropriation was committed by respondent A-1 even thereafter. The appraisal reports prepared by respondent A-2 were used by respondent A-1 also for the subsequent period, namely, 1987 when respondent A-2 was no longer working in the said branch. Therefore, while upholding the conviction and sentence awarded by the trial judge as against respondent A-1, in view of the special reasons recorded in the judgment, a sentence of rigorous imprisonment of three months is imposed on respondent A-2. He shall, however, be liable to pay a fine of Rs.20,000/- (Rupees twenty thousand only) and in default shall undergo a sentence of three months.

[Paras 40, 41 and 42] [589-G; 590-A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1394-1395 of 2004.

From the Judgment & Order dated 5.11.2002 of the High Court of Judicature Andhra Pradesh at Hyderabad in Criminal Appeal Nos. 12 and 13/1997.

A. Sharan , ASG., Amit Anand Tiwari and P. Parmeswaran for the Appellants.

A L.N. Rao, R. Santhan Krishnan, K. Radha Rani, P. Vijaya Kumar and D. Mahesh Babu for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Correctness of a judgment of acquittal passed B by the High Court of Judicature at Andhra Pradesh is in question in this appeal whereby and whereunder an appeal from a judgment of conviction dated 13.12.1996 by Special Judge, FO CBI Cases, Visakhapatnam in C.C. No.11 of 1994 has been allowed.

C 2. Respondents herein were Manager and Field Officer of Chaitanya Grameena Bank, Penumaka Branch, Guntur District. Allegations against them were that they conspired with each other in the matter of sanctioning and disbursing loans of Rs.5,000/- each under Crop Loan A/c. No.85/23, 86/221, 87/10, 85/95, 86/224 and 87/12 as contained in Exhibits D P-1 to P-6 in the names of fictitious persons by forging signatures and thumb impressions of the proposed borrowers in the documents resulting in misappropriation of the proceeds of Rs.30,000/-. The offences in question allegedly took place during the period 7.12.1984 to 14.8.1986. Respondent No.2 herein joined his services on 7.12.1984 as a Field E Officer on probation. He was allegedly transferred to another branch on 15.8.1986. The First Information Report was lodged on 31.12.1991 under Sections 409, 420 467 and 477-A read with Section 120-B of the Indian Penal Code and Section 5 read with Section 5(2) of the Prevention of Corruption Act, 1947.

F 3. Investigations were made into the said allegations. The prosecution, in support of its case, examined as many as 22 witnesses.

4. PW-21, K.V.V. Satyanarayana and PW-22, Kolluri Seetha are husband and wife. They purported to have applied for loan which was G sanctioned on the same day. The loan granted to both of them was renewed for two subsequent years. It was the prosecution case that they were residents of Ramamindaram Street, Satyanarayana Puram, Vijayawada, whereas they were shown to be residents of Penumaka in the District of Guntur. PW-4, Meka Kotireddy, was the village Sarpanch H who proved that the loans were granted in the name of fictitious persons

and that Exhibits marked as P-1, P-2 and P-5 were not the residents of village Seethanagaram. PW-3, U. Jayaprada Kumari, was the accountant of the bank who had paid the amount of loan in cash to respondent No.1. PW-5, M. Mallikarjuna Rao, was another accountant who said that the amount of loan was paid in cash to Respondent No.1. PW-7, B.M.S. Peter, was the post man who also proved that loan was sanctioned in the name of fictitious persons. PW-17, is a finger print expert who proved that thump impressions appearing on the loan account were that of accused No.1.

5. The learned Trial Judge on analyzing the evidences brought on records opined :

> "As per the addresses given in the loan applications covered by Exs. P.1 to P.6 the loanees are the residents of Seethanagaram village. But the evidence of P.Ws. 21 and 22 show that they are residing at Vijayawada and they have no lands. As per the evidence of P.W.1, A.2 recommended the loans in the loan documents Exs.P.1 and P.2 and A.1 sanctioned. P.W.3, U. Jayapradaha Kumari, who worked as Cashier for about 3 years along with A.1 and A.2 has stated that the debit voucher for Rs.1,000/- dated 5.5.87 in Ex.P.3 loan documents passed for payment by A.1 and she paid the amount. She received the debit voucher for Rs.1,000/- and put her initial on the relevant entry marked as Ex.P26 and A.1 put his initial against the entry in respect of crop loans A/c. No.87/10. She entered the payment in respect of crop loan 87/10 in the rough chitta. Ex.P.27 is the relevant entry. In Ex.P.6 loan documents both appraisal report and the sanctioning authority signed by A.1 and the debit voucher for Rs.1000/- passed by A.1 and the amount was paid by her. Ex.P.28 is the relevant entry in the payment scroll and contains her initials and A.1. She paid the cash of Rs.1000/- each under two debit vouchers in the loan documents Exs. P.3 and P.6 to A.1. P.W.5, M. Mallikarjunarao who worked as Clerk-cum-Cashier, when A.1 and A.2 worked, has stated that the crop loans covered by Exs. P.1, P.2, P.4 and P.5 were sanctioned by A.1 and the appraisal report was signed by A.1. He paid the amount to A.1 in respect of said loans.

A XXX XXX XXX

So the entire evidence referred above show that the persons whose photos affixed to the loan applications and the names of the persons mentioned in the loan applications were never resided in Seethanagaram Village and the evidence of P.Ws. 21 and 22 the husband and wife, who originally took the gold loans from Panumaka Branch of Chaitanya Grameena Bank is corroborated by the evidence referred abovewitnesses that they never resided in Seethanagaram Village."

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C 6. Before the learned Trial Judge, a contention was raised that the departmental proceeding has been initiated against respondent No.2 herein resulted in exoneration and, thus, he was entitled to a judgment of acquittal. The said contention of accused No.2 was rejected by the learned Trial Judge opining that the report of the enquiry officer who enquired into the D charges had not been brought on record.

7. The High Court, however, reversed the said judgment of the learned Trial Judge holding that the procedure adopted for obtaining fingerprints being contrary to the fundamental rights of the accused, the E same was not admissible in evidence. It was observed that the Bank did not receive any complaint from the loanees and the prosecution having not brought any corroborative material on record, the impugned judgment of the Trial Judge cannot be sustained. Furthermore respondent No.2 having been exonerated in the departmental proceeding, a different view F could not be taken by the criminal court.

8. We may notice the views of the High Court in this behalf which is in the benefit to the following effect :

"The procedure as adopted by the prosecution especially during G the investigation by the investigation officer by taking the signatures and thumb impressions of the Manager itself is not valid and inadmissible in evidence. Except the report of the officer of the Bank, there is no complaint of whatsoever nature from the loanees as to non-receipt from any proper quarters at any point of time. H Therefore, in the absence of proper evidence being available, it is

too difficult to accept the mere statement of P.W.4, the Sarpanch especially for showing the non-existence of the loanees and draw any presumption as to falsifying the record and misappropriation of the amounts by the appellants herein. There is absolutely no acceptable evidence to show that at the time of verification, the loanees were not present before the Field Officer. In the absence of any documentary evidence in its support, it is not safe to simply place reliance on the oral testimony of P.W.4. Admittedly, as per the cashier, she has made due entries and a rough chitta in regard to the receipt of the payments."

9. Mr. Amerendra Sharan, learned Additional Solicitor General, appearing on behalf of the appellants, interalia, would submit that :

1. In view of the Constitution Bench decision of this Court in *State of Bombay* v. *Kathi Kalu Oghad* AIR (1961) SC 1808, the High Court committed a serious error in opining that accused persons could not have asked to give their specimen left thumb impression or signatures.

2. Keeping in view the fact that the loan had been sanctioned in form of non-existing persons, the question of their coming forward to lodge any complaint in relation thereto did not arise and, in fact, PW-21 and PW-22, in whose name, the loans were sanctioned, came forward and deposed before the learned Trial Judge stating that they had not obtained any loan.

3. The High Court furthermore committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the prosecution had proved, beyond all reasonable doubts, its case on the basis of the testimonies of PW3, PW-4, PW-5, PW-7, PW-17, PW-21 and PW-22.

4. Exoneration of Respondent No.2 in the departmental enquiry could not have been a ground for recording a judgment of acquittal.

10. Mr. Prabhakar, learned counsel appearing on behalf of

A respondent No.1, on the other hand, submitted :

1. PW-3 and PW-5 were not trustworthy witnesses as both of them had accepted that there was no documentary evidence to show that they had paid the amount to accused No.1.

B 2. Accused No.1 being the Manager of the Bank, could not have sanctioned the loan save and except on the basis of appraisal report issued by Accused No.2, who was the Field Officer.

3. The amount of loan being only Rs.5,000/- purported to have been paid each to PW-21 and PW-22 and the same having C been only renewed in subsequent years, this Court should draw the presumption that the loanees have been repaying the loan amount.

4. The report of the fingerprint expert should not have been D accepted by the learned Trial Judge as the thumb impression of the right middle finger had been taken and not the left thumb impression.

11. Mr. Nageshwar Rao, senior counsel appearing on behalf of accused No.2, urged that respondent No.2 was entitled to a judgment E of acquittal inasmuch as :

1. The prosecution case is that all acts of forgeries which had been done by accused No.1 and the accused No.2 was only a witness thereto.

F 2. The only charge against Respondent No.2 being that he was the one who prepared the appraisal report, which being only a procedural requirement, he could not have been convicted for the offence of forgery.

G 3. Respondent No.2 having joined the services only in the year 1984 and having been transferred on or about 14.8.1986 and subsequent renewal of loans having been processed in 1987, he must be held to be wholly innocent.

4. The departmental proceedings against Respondent No.2 H having resulted in his exoneration, he could not have been

convicted in the criminal case. A

12. Following facts emerge from the records :

On 20.5.1985 one K.Venkata Satyanarayana (PW-21) applied for crop loan of Rs.5,000/-. In the said application, he was shown to be the resident of village Seetanagaram, district Guntur. In his deposition, PW-21 stated that he was a resident of District Vijayawada. B

The appraisal report was prepared by the Field Officer on 20.5.1985 itself whereupon the Manager made recommendations and sanctioned the loan on the very same day, i.e., 20.5.1985. The amount of loan was also disbursed on the same day. C

On 14.6.1986, loan of K. Venkata Satyanarayana was renewed and all the formalities, i.e., from the stage of filing application to disbursement on renewal were completed on the very same day.

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On 14.6.1986, Mrs. K. Seeta (PW-22) wife of K. Venkata Satyanarayana, also purported to have applied for a crop loan of Rs.5,000/-. In her application also, her residence was shown as village Seetanagaram, District Guntur, while in her deposition, she stated that she was a resident of District Vijayawada. On this occasion also, all the formalities for grant of loan were completed on 14.6.1986 itself and amount of the loan was disbursed on the very same day. E

On 4.5.1987, loan of K. Venkata Satyanarayana was again renewed. On the basis of the existing appraisal report, sanction of loan was granted by the Manager and the loan amount was also disbursed on the same day. F

Evidently, the formalities required to be complied with for grant of loan, appraisal report recommendation, sanction and disbursement of loan were completed on the very same day on which application for grant of loan was filed. G

PW-4, the village Sarpanch, in his deposition also stated that PW-21 and PW-22 in whose favour the abovesaid loans were sanctioned were not the resident of village Seetanagaram.

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A 13. Both PW-3 and PW-5, in their depositions before the learned Trial Court stated about the procedure for grant of loan followed in the bank. It appears that the accused No.1 for all intent and purport used to do everything himself which were required offering for the purpose of grant of loan. It has furthermore been brought on record that PW-21 and PW-
B 22 were known to the Manager of the Bank, i.e. Respondent No.1. They were residents of a different district, namely, Vijayawada. They had taken loan from the said bank on deposit of gold ornaments on an earlier occasion. They redeemed the said loan and took their ornaments back. They were known to the respondent No.1 since then.

C 14. The modus operandi of respondent No.1 appeared to be that he had affixed his own thumb impression instead of the those of the loanees, viz. PW-21 and PW-22 respectively. Upon sanction of the said loan, the accountant concerned paid the amount of loan to accused No.1.
D Loan was purported to have been sanctioned either on the same day or within a few days from the date of purported applications. The said loans, as noticed hereinbefore, were also renewed for the years 1986 and 1987.

15. The finger print expert, in his evidence, proved that specimen fingerprints marked as S-1 to S-4 in Exhibit P-38 tallied with the disputed
E fingerprints marked as Q-166, Q-169, Q-170, Q-171 and Q-172 with the specimen right middle finger impressions marked as S-4-11 on the F.P. slip marked as S-4.

16. Our attention, however, has been drawn by Mr. Prabhakar to
F the statement that the finger impressions marked as S-4 were more clear than the finger impressions marked as S-1 to S-3, to contend that the said specimen impressions were not clear.

17. PW-17, Mr. Venkateswara Rao, is a fingerprint expert. He had been working in Finger Bureau as Finger Print Searcher since 1971. He
G had passed All India Finger Print Expert's Examination conducted by Central Finger Print Bureau, Calcutta. He was promoted as Finger Print Expert in the year 1975 and was furthermore promoted as Finger Print Inspector in 1979. He had deposed in a number of civil and criminal cases as an expert.

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18. We do not find any reason to discredit the testimony of the said expert. He was a qualified Finger Print Examiner. Apart from the fingerprints, the prosecution had also obtained the specimen handwritings of Respondent No.1. Handwritings on the said loan documents/ applications for grant of loan was found to be that of accused No.1.

19. PW-3, U. Jayaprada Kumari, in her deposition, stated :

> "Both myself and A-2 were directly appointed to Penumaka branch. After receiving the loan documents from the borrowers all the documents will be filled up by the bank officials during lunch hour. The loan documents will be filled up after the disbursement the loan amounts to the borrowers. The Branch Manager used to obtain the signatures and that thumb impression of the borrowers on loan application."

20. PW-5, Mallikarjuna Rao, also stated that debit vouchers of Rs.4,000/- in Exhibit P-6 loan document contained only one stamp showing as cash paid but it did not contain his signature although, it purported to have been shown to be his. Ext. P-6 was, therefore, was a forged document.

21. It may be true, as has been contended by Mr. Prabhakar that there was no documentary evidence to show that the amount had actually been paid in cash to the accused No.1. But then no documentary evidence would be available as it was for the respondent No.1, as Manager of the Bank to hand over the amount in cash to the loanees upon receiving the same from PW-3.

22. The aforementioned two witnesses who had been working in the same branch of the bank with the respondents herein have proved the procedures adopted in the matter of grant of loan. There cannot, therefore, be any doubt whatsoever that ample materials have been brought on record by the prosecution which led to only one conclusion that the accused were responsible therefor.

23. It may be true that no act of forgery and misappropriation has been attributed to Respondent No.2, but he was the one who had

A prepared the appraisal report. After preparation of such appraisal report, the loan amount having been sanctioned and the amount of loan purported to have been paid to the loanees and, hence, we are of the opinion that he was also guilty of commission of the said offence.

B 24. Documents pertaining to the loan transactions bear the same date, i.e., process of application, technical recommendation, preparation of appraisal report, sanction and disbursement of loan. All transactions, therefore, took place on the same date which clearly establishes that they were manipulated by Respondent No.1.

C 25. PW-3, in her deposition, in no uncertain line, stated that all transactions right from application to disposal took place in the afternoon of a day and all the documents used to be processed during the lunch hour, whereas as per to the procedure, the disbursement of loan could take place only upon proper verification thereof.

D 26. The High Court, therefore, in our opinion, completely misdirected itself in passing a judgment of acquittal in favour of the respondents. The learned Trial Judge had assigned cogent reasons in support of its findings. The High Court did not meet the said reasonings.

E 27. It purported to have laid emphasis on exoneration of respondent No.2 in departmental enquiry.

28. The departmental enquiry was completed even before the investigation in this case started. The Investigating Officer (PW-23), in F his evidence, stated :

> "I am not aware whether the Departmental enquiry was conducted against A.2 and it was completed even before I started my investigation."

G 29. Furthermore, the enquiry report has not been brought on record. The factum of exoneration of respondent No.2 in the departmental proceedings was raised by way of defence. It was, therefore, obligatory on his part to bring on record all the relevant documents, namely, the charge-sheet, the other materials brought on record by the department

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and the findings of the Enquiry Officer. If the statement of the Investigating Officer (PW-23) is to be accepted and there is absolutely no reason as to why it should not be; there was no occasion for the enquiry officer to have the benefit of the depositions of the purported loanees, namely, PW-21 and PW-22, the opinion of the fingerprint expert and other material brought on record by the prosecution which clearly established the involvement of the respondents herein.

30. Mr. Nageshwar Rao relied upon a decision of this Court in *P.S. Rajya* v. *State of Bihar,* [1996] 9 SCC 1. The fact situation obtaining therein was absolutely different. In that case, in the vigilance report, the delinquent officer was shown to be innocent. It was at that juncture, an application for quashing of the proceedings was filed before the High Court under Section 482 of the Code of Criminal Procedure which was allowed relying on *State of Haryana* v. *Bhajan Lal,* [1992] Supp. 1 SCC 335, holding :

> "23. Even though all these facts including the Report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the Report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. *We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued."*
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> (Underlining is ours for emphasis)

31. The said decision was, therefore, rendered on the facts obtaining therein and cannot be said to be an authority for the proposition that exoneration in departmental proceeding ipso facto would lead to a judgment of acquittal in a criminal trial

32. In *Superintendent of Police (CBI)* v. *Deepak Chowdhary & Ors.,* [1995] 6 SCC 225, this Court while considering a matter of sanction, *vis-à-vis*, exoneration in a departmental proceedings, held :

A "We find force in the contention. The grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the B sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing C to the accused before according sanction does not arise. The High Court, therefore, was clearly in error in holding that the order of sanction is vitiated by violation of the principles of natural justice."

33. In a case of this nature where departmental proceeding was D initiated only as against respondent No.2, the enquiry officer did not have the benefit to consider all the materials which could be brought on record by the Department in the light of the investigation made by a specialized investigating agency, the evidence of experts and deposition of witnesses to show that forgery of document has been committed by forging thumb E impression and handwriting, we are of the opinion that exoneration of respondent No.2 in the departmental proceedings cannot lead to the conclusion that he was not guilty of commission of the offences wherefor he was charged.

34. The High Court also committed a manifest error in purporting F to hold that the specimen fingerprints and handwritings could not have been taken from Respondent No.1.

35. Sections 5 and 6 of the Identification of Prisoners Act, 1920 clearly provides for such a contingency and read as under :

G *"5. Power of Magistrate to order a person to be measured or photographed.*—If a Magistrate is satisfied that, for the purposes of any investigation of proceeding under the Code of Criminal Procedure, 1898 (5 of 1898) it is expedient to direct any person to allow his measurements or photograph to be taken, he may

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make an order to that effect, and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in the order and shall allow his measurements or photograph to be taken, as the case may be, by a police officer: A

Provided that no order shall be made directing any person to be photographed except by a magistrate of the first class: B

Provided further, that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.

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6. Resistance to the taking measurements, etc.—(1) If any person who under this Act is required to allow his measurements or photograph to be taken resists or refuses to allow the taking of the same, it shall be lawful to use all means necessary to secure the taking thereof. D

(2) Resistance to or refusal to allow taking of measurements or photograph under this Act shall be deemed to be an offence under section 186 of the Indian Penal Code, 1860 (45 of 1860)."

36. A Constitution Bench of this Court in *State of Bombay* v. *Kathi Kalu Oghad,* AIR (1961) SC 1808, examined the question in regard to the application of the aforementioned provisions, vis-à-vis the constitutional mandate that nobody shall be compelled to be a witness against himself as contemplated in Article 20 of the Constitution of India in great details. It was clearly held : E F

"10. "To be a witness" may be equivalent to "furnishing evidence" in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused person for purpose of identification. "Furnishing evidence" in the latter sense could not have been within the contemplation of the Constitution makers for the simple reason that — though they may have intended to protect an accused person from the hazards of self- G H

A incrimination, in the light of the English law on the subject — they could not have intended to put obstacles in the way of efficient and effective investigation into crime and of bringing criminals to justice. The taking of impressions of parts of the body of an accused person very often becomes necessary to help the B investigation of a crime. It is as much necessary to protect an accused person against being compelled to incriminate hims elf, as to arm the agents of law and the law courts with legitimate powers to bring offenders to justice. Furthermore it must be assumed that the Constitution-makers were aware of the existing law, for C example, Section 73 of the Evidence Act or Sections 5 and 6 of the Identification of Prisoners Act (33 of 1920). Section 5 authorises a Magistrate to direct any person to allow his measurements or photographs to be taken, if he is satisfied that it is expedient for the purposes of any investigation or pro ceeding D under the Code of Criminal Procedure to do so: "Measurements" include finger impressions and foot-print impressions. If any such person who is directed by a Magistrate, under Section 5 of the Act, to allow his measurements or photographs to be taken resists or refuses to allow the taking of the measurements or photographs, E it has been declared lawful by Section 6 to use all necessary means to secure the taking of the required measurements or photographs. Similarly, Section 73 of the Evidence Act authorises the court to permit the taking of finger impression or a specimen handwriting or signature of a person present in court, if necessary for the F purpose of comparison.

11. When an accused person is called upon by the court or any other authority holding an investigation to give his finger impression or signature or a specimen of his handwriting, he is not giving any G testimony of the nature of a "personal testimony". The giving of a "personal testimony" must depend upon his volition. He can make any kind of statement or may refuse to make any statement. But his finger impressions or his handwriting, in spite of efforts at concealing the true nature of it by dissimulation cannot change their H intrinsic character. Thus, the giving of finger impressions or of

specimen writing or of signatures by an accused person, though it may amount to furnishing evidence in the larger sense, is not included within the expression "to be a witness". A

37. For the views we have taken, the impugned judgment of the High Court cannot be sustained. We are not oblivious of the fact that presumption of innocence is a human right and when an accused is acquitted by a court, such presumption becomes stronger. We are furthermore not oblivious that a superior court, ordinarily, would not interfere with a finding of acquittal, if two views are possible as has been held by this Court in *State of Haryana* v. *Sher Singh & Ors.*, [2002] 9 SCC 356; *Narender Singh & Anr.* v. *State of M.P.*, [2004] 10 SCC 699 and *Budh Singh & Ors.* v. *State of U.P.*, [2006] 9 SCC 731 whereupon Mr. Nageshwar Rao has placed strong reliance. B C

38. It is, however, a trite law that an appellate court, while entertaining an appeal from a judgment of acquittal, would also be entitled to consider the evidences brought on record by both the prosecution and the defence and arrive at its own decision. Interference with a judgment of acquittal may not be made when two views are possible to be taken, but when on appraisal thereof, only one view is possible, the appellate court would not hesitate to interfere with the judgment of acquittal. D E

In this case, we are firmly of the view that no two views are possible to be taken.

39. Mr. Rao, however, would submit that involvement of respondent No.2 is minimal. He had proposed an appraisal report but there is nothing to show that he had obtained any monetory benefit. F

40. The entire prosecution case relating to charges of forgery and misappropriation has been attributed to respondent No.1 alone. He was the one who had put on shelves all the procedural requirements. Not only he, during the luncheon hours, filled up the application forms, but even prior thereto he had purported to have received the documents, sanctioned the loan and obtained the amount of loan in cash. PW-21 and PW-22 were known to him and not to the respondent No.2. G

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A 41. We, therefore, are of the opinion that a case has been made out to invoke the proviso appended to sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 in the case of respondent No.2 Furthermore, he worked in the bank for a short period and was still undergoing probation. Forgery and misappropriation was committed by
B respondent no.1 even thereafter. The appraisal reports prepared by respondent No.2 were used by respondent No.1 also for the subsequent period, namely, 1987 when respondent No.2 was no longer working in the said branch.

C 42. For the reasons aforementioned, while upholding the conviction and sentence as awarded by learned Trial Judge as against respondent No.1 (accused No.1), in view of the special reasons recorded hereinbefore, we impose a sentence of rigorous imprisonment of three months on respondent No.2. He shall, however, be liable to pay a fine of
D Rs.20,000/- (Rupees twenty thousand only) and in default shall undergo a sentence of three months.

43. Accordingly, the appeals are allowed with the aforementioned directions. The respondents may be taken into custody for serving out the respective remaining sentences.

E R.P. Appeals allowed.