



# THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Revision Jurisdiction)

**DATED : 13-05-2013**

CORAM

**HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE**

**Crl.Rev.P. No. 03 of 2012**

Shri Kamal Prasad Giri,  
Son of Shri Til Chand Giri,  
Resident of Tintek,  
Yan Busty,  
East Sikkim.

**... Revisionist/  
Accused**

Versus

State of Sikkim  
through the Public Prosecutor,  
Government of Sikkim,  
Gangtok,  
East Sikkim.

**... Respondent**

For Revisionist : Mr. D. R. Thapa, Senior Advocate  
with Ms. Rubina Pradhan,  
Advocate.

For Respondent : Mr. Karma Thinlay Namgyal,  
Additional Public Prosecutor with  
Mr. S. K. Chettri, Assistant Public  
Prosecutor.

## **J U D G M E N T**

**Wangdi, J.**

In this Revision Petition the Revisionist-Accused seeks to assail the impugned judgment dated 21-06-2012 passed by the Learned Sessions Judge, Special Division - I,



Sikkim at Gangtok in Criminal Appeal No.4 of 2011 confirming the judgment and order on sentence dated 30-04-2011 of the Learned Judicial Magistrate (First Class), East Sikkim at Gangtok, in G.R. Case No.17 of 2006.

**2.** Briefly stated, the case of the prosecution is that a written complaint was received by the Sadar Police Station, Gangtok, from one Ramesh Kumar Agarwal, Complainant, P.W.1, Proprietor of Kwaliti Enterprises, Tadong, Gangtok, at about 1425 hours of 18-11-2005, that on going through the statement of his Cash Credit Account No.869 held by him in the Central Bank of India (in short "CBI"), Gangtok Branch, sums of Rs.2,60,000/- and Rs.4,30,000/- had been unauthorisedly withdrawn by unknown persons vide two cheques by forging his signature.


**3.** This led to registration of Sadar P.S. Case F.I.R. No.146(11)05 dated 18-11-2005 under Sections 419/420/468/471 of the Indian Penal Code (in short "IPC") against unknown persons and investigation taken up by one S.I. Laxuman Pradhan, P.W.33.

**4.** During the course of the investigation, the two questioned cheques bearing No.019791 dated 06-05-2005



for Rs.2,60,000/- and No.019790 dated 24-10-2005 for Rs.4,30,000/-, Exhibits 2 and 3 respectively, were seized from the possession of the Senior Manager, CBI, P.W.14, in presence of witnesses under Seizure Memo Exhibit 15.

**5.** During the progress of the investigation, the Revisionist-Accused was arrested as a suspect as he was found to have been working as a Salesman in the shop of the Complainant during the material period. That during his interrogation, the Revisionist-Accused disclosed that he had stolen two leaves of cheques from the Cheque Book of the Complainant found in the drawer of a table in the shop upon which he forged the signature of the Complainant and used the seal of the Firm, Kwaliti Enterprises. Using these forged cheques, he first withdrew a sum of Rs.2,60,000/- from CBI vide cheque No.091791 on 06-05-2005 posing as one 'Manoj' and deposited the amount in his own Savings Bank Account in the IDBI Bank, Gangtok Branch. After the Revisionist-Accused had left the job in July, 2005, under the Complainant, he forged the signature of the Complainant on the other cheque bearing No.019790 also posing as one 'Manoj' withdrew a sum of Rs.4,30,000/- from the Complainant's Account in the CBI



on 24-10-2005. Out of this amount, the Revisionist-Accused gave loan of varying sums to different persons keeping a sum of Rs.3,00,000/- with his relative in Nepal. On the basis of the evidence collected after the investigation, charge-sheet was filed against the Revisionist-Accused under Sections 419/420/468/471/381 IPC for his trial.

**6.** Charges were framed against the Revisionist-Accused by the Trial Court under the aforesaid provisions to which he pleaded not guilty and claimed trial.


**7.** On the conclusion of the trial in which the prosecution examined as many as 34 prosecution witnesses and exhibited a number of documents, the Judicial Magistrate found the Revisionist-Accused guilty of the offences under Sections 419/420/468/471 IPC but acquitted him for the one under Section 381 IPC. He was sentenced to undergo simple imprisonment of 2 months and to pay fine of Rs.1,000/- for the offence under Section 419 IPC and, in default of the payment of fine, to undergo further simple imprisonment of 1 month. For the offence under Section 420 IPC and Section 468 IPC, the Revisionist-Accused was sentenced to undergo simple



imprisonment of 6 months and a fine of Rs.2,000/- in default of payment of which to undergo further simple imprisonment of 2 months separately in each of those offences. For the offence under Section 471 IPC, he was imposed a sentence of 2 months' simple imprisonment and a fine of Rs.500/- in default of payment of which he was directed to undergo further simple imprisonment of 15 days. It is relevant to note that the Revisionist-Accused was sentenced separately in respect of the offences pertaining to the two forged cheques. It was further directed by the Trial Court that the sentences were to run concurrently.

**8.** In the Appeal being Criminal Appeal No.4 of 2011 filed by the Revisionist-Accused before the Sessions Judge, Special Division – I, East Sikkim at Gangtok, the judgment and sentence passed by the Judicial Magistrate was upheld vide the impugned judgment dated 21-06-2012.

**9.** Before this Court, the Revisionist-Accused raised primarily the following contentions to assail the impugned judgment: -

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- (i) The First Information Report (in short "FIR") apart from being vague has been lodged belatedly and that there is no explanation for such delay. That although the shortage in the Bank Account of the Complainant was discovered on 15-11-2005 but the FIR was lodged only on 18-11-2005. The first charge drawn against the Revisionist-Accused under Section 419 IPC was wrongly framed as it states that the Revisionist-Accused had cheated the Bank when it ought to have been the Complainant who was cheated and further that the circumstances as to how the Bank was cheated has not been indicated.
- (ii) Charge-sheet filed against the Revisionist-Accused is vague.
- (iii) The Disclosure statement being Exhibit 20 said to have been given by the Revisionist-Accused was not proved as having been given by the Revisionist-Accused in view of the fact that the evidence of P.W.27, one of the witnesses to the disclosure statement, had been discarded by the



Trial Court and that even the evidence of P.W.28, the other witness to the disclosure statement, did not support the case of the prosecution.

- (iv) The evidence of P.Ws.14, 16 and 18, cannot be believed as they are interested witnesses being employees of the CBI and further that identification of the Revisionist-Accused by them in their evidence in Court is an improved version of their statements recorded under Section 161 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C") and as such called for its outright rejection.
- (v) When it was in the evidence of P.W.14 that the Cashier, CBI, would be the best person to say as to whether payments were made against the questioned cheques or not, the prosecution chose not to examine the Cashier and, therefore, withheld a vital witness that called for adverse presumption being drawn against them.
- (vi) When it was in the evidence of P.W.16 that in order to ascertain as to whether the questioned



cheques were encashed or not one had to refer to the Accounts and Ledger Book pertaining to the Complainant, the prosecution ought to have produced those. Since it was not done, adverse inference has to be drawn against them on this account also.

- (vii) Only one witness was examined to prove that the specimen handwriting of the Revisionist-Accused had been taken by the Investigating Officer for opinion of the Government Examiner of Questioned Documents (in short "GEQD").
- (viii) The proof of the GEQD report was incomplete as the prosecution chose to examine only one out of the two Handwriting Experts who had given the opinion thereby depriving Revisionist-Accused of the opportunity to examine the other Expert resulting in grave miscarriage of justice and causing serious prejudice to him.

**10.** In order to impress upon us on his submissions, Mr. D. R. Thapa, Learned Senior Counsel for the Revisionist-Accused, took us through substantial part of the evidence and the records of the case.





**11(a).** Mr. Karma Thinlay Namgyal, Learned Additional Public Prosecutor, at the outset, raised the question of the very maintainability of the Revision Petition. It was his submission that in view of the concurrent finding of facts arrived at by the Courts below it would not be permissible in law for this Court to re-appreciate the evidence as is being sought for on behalf of the Revisionist-Accused. As per him, interference by this Court may have been called for if it had been demonstrated that there were grave errors of fact or law committed by the Courts below or had been successful in indicating glaring features in the decisions of the Courts below that would have vitiated the foundation of the prosecution case. The case of ***Prakash Saha vs. State of Sikkim*** in ***Crl.Rev.P. No.4 of 2012*** decided by this Court was referred to by him in support of his contention.

**(b)** In ***Raj Kumar vs. State of Himachal Pradesh : (2008) 11 SCC 76*** the relevant portion of which is reproduced below: -

**"10.** In *State of Orissa v. Nakula Sahu* it was held that the High Court should not have interfered with the concurrent findings recorded by the trial court and the Sessions Judge in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the trial court or the Sessions Judge.



11. In *State of Kerala v. Puttumana Illath Jathavedan Namboodiri* it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice." [underlining supplied]

(c) We may also refer to *State of Haryana vs. Rajmal and Another* : *AIR 2012 SC 779* where it has been held as under: -

"12. It has been also held by this Court in *Amar Chand Agarwala v. Shanti Bose and another* [AIR 1973 SC 799] that the revisional jurisdiction of the High Court under Section 439, Cr. P.C. is to be exercised, only in an exception case, when there is a glaring defect in the procedure or there is a manifest error on a point of law resulting in a flagrant miscarriage of justice. [para 20, page 804 of the report]" [underlining supplied]

12. Having regard to the position of law as indicated above, I find force in the submission of the Learned Additional Public Prosecutor but for the ends of justice and to allay any sense of miscarriage of justice, I have deemed it appropriate to proceed to examine the contentions raised on behalf of the Revisionist-Accused to the extent essential for the purpose.



**13.** Before proceeding further, it is made clear that having regard to the parameters and the scope of exercise of revisional jurisdiction only relevant facts that are material for dealing with the questions involved and the contentions raised before me have been dealt with.

**Contention (i) and (ii)**

**(a)** The vagueness of the FIR lodged on behalf of the Revisionist-Accused appears to be clearly misplaced as we find that it clearly sets out the necessary ingredients for a criminal case to be registered. First Information Report by its very term is an information given to an Officer-in-Charge of a Police Station under Section 154 Cr.P.C based upon which investigation is launched and further materials collected to pin point the accused and the circumstances under which an accused has committed the offence set out in the FIR. In any case a FIR is not a substantive piece of evidence but its only use is to contradict or corroborate and nothing further.

**(b)** As regards the question of delay in filing FIR, I find that this stands fully explained by the Complainant, P.W.1. It is in the evidence of P.W.1 that

“..... when I checked by cash-credit- account no. 869 at the said bank I



found that an amount of Rs. 2,60,000/- (Rupees Two lakhs Sixty thousand) only and an amount of Rs. 4,30,000/- (Rupees Four lakhs thirty thousand) only had been withdrawn from my account on 06.05.05 and 24.10.05 respectively . I came to know the same from the statement of accounts. Thereafter, I went to my bank to enquire about it. The bank showed me two cheques vide which the aforesaid amounts of cash had been withdrawn on two different dates. I noted that the signatures appearing on those two cheque leaves did not belong to me. Some one had forged it. While checking my cheque book I found that two cheque leaves were missing. The accused had left the job on 30.07.07. On knowing the above facts I went to the Sadar Thana and reported the matter. ....”

(c) Relying on that evidence, the Appellate Court at paragraph 20 of its judgment expressed its satisfaction that the prosecution had explained the delay of 3 days in lodging the FIR. In any case, delay cannot be the sole ground for throwing out the entire case of the prosecution. It is also relevant to note that the point of delay in lodging FIR does not appear to have been raised before the Trial Court but was taken up for the first time only before the Appellate Court. The question of the charge being wrongly framed on the other hand had been raised only before the Trial Court which has been dealt with elaborately in its judgment at paragraph 34.

“34. Pausing here for a moment, it is submitted by Ld. Defence counsel that the charges framed are defective as the charge does not mention under what circumstances documents were allegedly forged. However,



on perusal of charge as framed, I find that all the relevant facts and circumstances have been mentioned in the charge. Moreover, when the charges were framed, defence could have approached the correct forum in the event he was aggrieved with the order. Hence, it is not open for him to raise this issue at this stage."

(d) Before this Court, the only basis for the Revisionist-Accused to assail the charge was that the circumstances under which the Revisionist-Accused had allegedly committed the offence of cheating has not been set out therein. Reliance on this was placed by Mr. D. R. Thapa to the case of ***Hasan Ali vs. State of M.P. : AIR 1983 SC 352(2)***. In my view, this decision is clearly distinguishable from the facts of the present case as will be evident from the following portions of the judgment: -

"2. The main allegation is that the appellant forged a Nikah form. The charge does not mention under what circumstances the document was forged. It is vague. Even when the oral evidence was adduced at the trial no evidence was produced to prove the charge. In the circumstances we find no legal evidence on the basis of which he could be convicted. ...."

(e) As can be seen from the above, the sole allegation in that case appears to have been the Accused having forged a document, i.e., "Nikah form", and no evidence had been produced to prove that charge. Whereas in the present case, the FIR clearly sets out the facts of an unknown person having withdrawn the sums of



money alleged by forging the signature of the Complainant on cheques that were stolen. There cannot be better particulars than this. That apart, the prosecution has produced not less than 6 witnesses, namely, P.Ws.1, 14, 16, 18, 25 and 32, the last being Handwriting Expert, to prove the cheques having been forged by the Revisionist-Accused. The contention, therefore, is clearly misplaced and stands rejected.

### **Contention (iii)**

(a) The next contention is that the disclosure statement, Exhibit 20, rendered by the Revisionist-Accused was not proved by the prosecution and, therefore, could not have been relied upon. Although there is no specific finding on this by the Trial Court on this, the Appellate Court is found to have dealt with this question in detail in paragraphs 32, 33, 34, 35 and 36, wherein the plea has been rejected by accepting the evidence of P.W.28. We may reproduce paragraph 36 below for better appreciation: -

“36. Therefore, the evidence of PW 28 in my opinion has sufficiently proved the disclosure exbt.20 and the recovery of M.O.XII made hereafter as the witness has clearly maintained that it was on the basis of the statement of the accused that they went to the house of the accused at Tintek and from where the cash



(M.O.XII i.e. Rs: 1,31,500/-) was found in the Godrej as pointed out by the accused which was thereafter recovered and seized vide Exbt.19. This is a fact which could not have been known to the investigating agency otherwise."

**(b)** On careful scrutiny of the evidence of Sanjay Sharma, P.W.28, witness to the disclosure statement, Exhibit 20, I am convinced that the disclosure statement was indeed rendered by the Revisionist-Accused in his presence in view of the categorical statements found in his statement-in-chief which in substance are found not to have been demolished in the cross-examination despite some dithering. But, the lurking doubt caused by such dithering was set at rest when he re-emphasised his unequivocal statement-in-chief which has been recorded by the Trial Court as "at this stage, witness deposes that the accused was making the statement". We stand reassured of the fact that the disclosure statement was indeed rendered by the Revisionist-Accused by the evidence of this very witness P.W.28 that after recording the statements he had accompanied the police personnel and the accused person to his house at Tintek busty where the latter himself took out the money from the Godrej and handed it over to the police along with one personal diary and cheque book. This is evident from his deposition that



"after recording exbt-20 I along with police personnel and accused person proceeded to the house of accused situated at Tintek busty. When we reached the house of the accused the accused himself took out the money from the Godrej and handed over to the police along with personal diary and cheque book." This also stands corroborated by the evidence of P.W.27, Tika Maya Nepal, the then Panchayat President of Tintek Gram Panchayat Unit when it has come her evidence that "on such request of the police Officer I went to the house of the accused along with police Officers and also the accused. When we reached to the house of the accused we saw currency notes were on the table in the house of the accused. The Officer In charge, Sadar P.S. requested me to count the currency notes lying on the table in the house of the accused and I counted the same." No doubt, there is some discrepancy as to the place from where the money was recovered, i.e, whether it was taken out by the accused from the Almirah or from on top or on the table. This minor discrepancy does not detract from the fact that the recovery was made from the house of the accused at his instance lending credence to the factum of the Revisionist having given the disclosure statement.





(c) As observed earlier, the Courts below have come to a concurrent finding that the Revisionist-Accused did render the disclosure statement on the basis of which the recovery of money was made from his house at his behest.

**Contention (iv)**

(a) The plea of P.Ws.14, 16 and 18, being interested witnesses, as they were Bank employees, were neither raised before the Trial Court nor before the Appellate Court, therefore, it may not be appropriate for this Court to enter into this disputed question. This would have been permissible had it been shown on behalf of the Revisionist-Accused that this amounted to an error of law or fact and a feature so glaring that would shake the foundation of the prosecution case. Both the Courts below are found to have considered in detail the evidence of these 3 witnesses as will be revealed from paragraphs 40 and 41 of the judgment of the Trial Court portions of which are reproduced: -

“40. .... P.W. 16, Mrs. T. Yangden Bhutia, has stated in her deposition that sometime in the year 2005, accused came to the Central Bank of India and withdrew a sum of Rs. 2,60,000/- on behalf of Kwality Enterpirse through a cheque. The witness also identified Ext. 2 as the said cheque. She has further stated that accused is the



same person and she is one hundred percent sure that it was the accused who brought Ext. 2. She has stated that at the time of encashment, she asked the accused to sign on the reverse side of the cheque, i.e., Ext. 2 while issuing token and after the money was handed over to the accused, she also asked to put the signature of the accused on Ext. 2. She has clearly stated that on both the occasions, accused has signed on Ext. 2 as 'Majoj'. She has identified the signature of the accused marked Ext. 2(d) and 2(e) with certainty.

41. P.W. 18, Meera Thapa, has stated that on 24.10.2005 she called token No.1 to hand over the money and on hearing the same, accused came to the counter to receive the money and while releasing the money, she asked the accused to sign on the reverse side of the of the cheque where he signed as singed as 'Manoj' in her presence. This P.W. has identified the accused positively and she has also identified the cheque marked Ext. 3 as the same cheque presented for encashment and Ext. 3(d) as the signature of the accused. The evidence of this P.W. has not bee (sic) demolished and it remains firm. Similarly, P.W. 25, Rishi Kumar Ishar, has stated that accused withdrawn a sum of Rs. 2,60,000/- on 06.05.2005 from Central Bank of India vide Ext. 2. He also identified Ext. 2 (f) as the relevant portion on the cheque written in his hand writing. P.W. 25 has also stated that on the relevant day when the accused came to the Central Bank of India he made to sign him on Ext. 2 on the reverse side and he identified Ext. 2(e) as the signature made by the accused."

**(b)** We find this in greater detail in the impugned judgment of the Appellate Court at paragraphs 22, 23, 24, 25, 26, 27, 28, 29 and 30, the relevant portions of which are extracted below: -

"22. Moreover PW 16 Mrs. T. Yanden Bhutia , Assistant Manager, Central Bank of India at that time, has clearly identified the accused as the



same person who used to come to CBI Bank frequently to withdraw money on behalf of Quality Enterprises. ....

24. Similarly I have also gone through the depositions of the PWs 16,18 and 25 i.e. Mrs.T. Yanden Bhutia,Asst.Manager, CBI, Mrs.Meena Thapa, Clerk, CBI and Mr.Rishi Kumar Ishar , Head Cashier of CBI at the relevant time. PW 16 has clearly identified the accused as the person who used to visit Central Bank of India frequently to withdraw the money on behalf of the Quality Enterprises and stated that on the relevant day also, he had come to encash the cheque which she identified as exbt.2 for Rs: 2,60,000/- bearing the seal of the Bank. In fact this witness has stated " I am 100 % sure that exbt.2 was brought by accused who is present in the dock today." .....

27. Similarly PW 18, also identified accused as the same person who used to visit CBI Bank in order to withdraw money on behalf of Quality Enterprises situated at Tadong. She further deposed that she and "encashed Rs.: 4,30,000/- only to Manoj i.e. accused who is standing in the dock today. ....

28. The statement of both these witnesses in turn, has been further corroborated by the testimony of PW 25 who also clearly stated, "I know the accused standing in the dock. He is the same person who had come to our Bank C.B.I., Gangtok branch in order to withdraw sum of Rs: 2,60,000/- (Rupees two lakhs and sixty thousand) only on 6.5.2005 ." .....

**(c)** Since both the Courts below have most elaborately analysed the evidence of P.Ws.14, 16, 18 and 25 and summerised them in the portions of their judgments reproduced above, for the sake of brevity, it would not be necessary to deal with those again.

**(d)** It can be seen that the evidence of P.Ws.16, 18 and 25 are most vital for the prosecution as they were the



ones in the Bank to deal with the Revisionist-Accused in the two questioned transactions. P.W.14 was the Manager, CBI, at the material time, who witnessed the seizure of the two questioned cheques, Exhibits 2 and 3, vide Seizure Memo Exhibit 15, as we find from his deposition. I find no reason to disbelieve this witness as nothing has been brought out in his cross-examination to discredit him. In fact, his evidence corroborates those of P.Ws.16, 18 and 25. It is difficult to fathom the argument on behalf of the Revisionist-Accused that these are interested witnesses as nothing has been brought out to suggest that they nurtured any malice against the Revisionist-Accused. It is a settled position in law that evidence of interested witnesses need not necessarily be discarded on that ground alone. All that the law requires is that it ought to be subjected to close and careful scrutiny. For these reasons, the contention that these witnesses are interested witnesses stands rejected.

**Contention (v) and (vi)**

As regards non-production of the Cashier and the Statement of Accounts and Ledger Books in respect of the Complainant's Bank Account by the prosecution is concerned, I hold that in view of the other glaring



evidence noticed above, such inadequacies will have no consequence on the prosecution case.

**Contention (vii) and (viii)**

(a) The final contention of the Revisionist-Accused being prejudiced as only one Handwriting Expert from the GEQD, i.e., P.W.32, out of the two, who examined the documents, in my view, also appears to be unfounded considering the fact that this was neither raised before the Trial Court nor before the Appellate Court. In fact, the Revisionist-Accused appears to have clearly accepted the findings of both the Courts below that from the evidence of the Handwriting Expert the specimen signature of the Revisionist-Accused tallied with the ones contained in the questioned documents, i.e., the two cheques, Exhibits 2 and 3. The finding on this is found recorded in paragraph 52 of the judgment of the Trial Court which has been upheld and accepted by the Appellate Court at paragraph 31 of its impugned judgment. We may reproduce paragraph 52 of the judgment of the Trial Court and paragraph 31 of the impugned judgment of the Appellate Court below in that order: -

“52. P.W. 32, S. Shah, the Government Examiner of questioned documents has stated that Q-1 to Q-5 and Q-13 in Ext. 2 and Q-6 to Q-12



in Ext. 3 were written by the same person who wrote S-1 to S-18, A-1 to A-19. He has further stated that the person who wrote S-19 to S-36 did not write Q-1 to Q-13. He has proved Ext.24 as his opinion and his signature as Ext. 24(a). It is to mention here that Q-1 to Q-13 in Ext. 2 and 3 are the questioned handwritings and signatures, i.e., the handwriting and signature alleged to have been written by the accused and S-1 to S-18, A-1 to A-19 are the specimen handwriting and signature and the admitted handwriting of the accused. It is also to mention here that P.W. 3, Passang Dorjee Sherpa, has proved that the police had taken specimen handwriting of the accused as well as the P.W.1 in his presence and has proved Ext. 4 as the specimen handwriting/signature of P.W.1 and Ext. 9 as the specimen handwriting/signature of the accused."

"31. The next factor which further goes to point towards the guilt of accused is the forensic report exbt.24, as per which the specimen signatures of the complainant( exbt.4) did not match the signatures appearing on exbt.2 and 3 but rather the specimen signatures of the accused ( exbt.9) were found to be made by the same person who signed on exbt.2 and 3. To support his report exbt.24, the Government Examiner Shri S. Shah testified as PW 32 and proved the report and finding and has clearly stated that Q.1 to Q 13 in exbt.2 and 3 which are the questioned handwriting and signatures have been written by the same person who wrote S 1 to S 18, A1 to A 19 which are the admitted specimen handwritings of accused. This I find has further been supported by PW Shri Passang Dorjee Shepra who was witness when the specimen handwriting of accused was obtained and thus has corroborated the statement of PW 32 and proved exbt.9 as the specimen handwriting and signatures of accused. Exbt.9 and 6 which has also been clearly discussed by the Ld. Judicial Magistrate at paragraphs 52 and 54 of the case."

**(b)** In view of the above, examination of further witness to prove the same fact which stands fully



established by the evidence of the other witness, in my view, would be redundant. In any case, no prejudice also appears to have been caused by this to the Revisionist-Accused.

**(c)** Section 293 Cr.P.C. providing for reports of certain Government Scientific Experts does not mandate the Court to summon and examine Experts as to the subject-matter of their report. Under Sub-Section (2) of Section 293 discretion lies upon the Court to decide as to whether an Expert is to be examined. This is so, because under Sub-Section (1) of Section 293 Cr.P.C. any document purporting to be a report under the hand of the Government Scientific Expert may be used as evidence without it being subjected to its proof by the Government Scientific Expert. Section 293 is intended to save time and avoid needless examination of Experts unless the Court finds it necessary to examine them or when the accused requests for examination of such Experts.

**(d)** In the present case, the prosecution on their own appears to have produced P.W.32, one of the Handwriting Experts who had examined the questioned documents. His statement, *inter alia*, to the effect that



"all the documents as mentioned above have been examined/compared by me and I came to the conclusion that S-1 to S-18/A-1 to A-19 had been written by the same person who had also written Q-1 to Q-13. I had also opined that the person who wrote S-19 to S-36 had not written A-1 to Q-13. Exbt-24 is the opinion/report given by me in connection with the present case" would undoubtedly establish that he had examined the documents. No doubt, it is also in his evidence that "the concerned documents were also individually examined by Shri V.G.S. Bhatnagar, Government Examiner (formerly)" but this would not in any manner dilute the acceptability and efficacy of his opinion.


(e) Relying upon a Single Bench judgment of the Orissa High Court in **B. K. Kutty vs. The State : 1984 CRI.L.J. 1289** it is submitted by Mr. D. R. Thapa that opinion of a Handwriting Expert cannot be the sole basis for convicting the Revisionist. This position is no doubt trite in law and that the decision in Kutty's case (supra) has been rendered by relying upon **Murarilal vs. State of M.P. : AIR 1980 SC 531** by which it has been held that "it may be hazardous to base a conviction solely on the





opinion of a handwriting expert". But in the case at hand the conviction of the Revisionist is not based solely on the expert's opinion but is only taken as a corroboration to other proved circumstances. There is also no dispute that the amount withdrawn against the first cheque, Exhibit 2, was deposited by the Revisionist in his own Bank Account held in IDBI Bank, Gangtok Branch, as found established by the evidence of P.W.30, V. Rajeshwari, Operation Manager, IDBI Bank and the document Exhibit 23, the Savings Bank statement of the Revisionist-Accused. There is no doubt that from the money withdrawn by the second cheque, Exhibit 3, the Revisionist had set apart Rs.3,00,000/- and kept it in the custody of his relative in Nepal. This stands established by the evidence of P.W.26, Tek Chand Giri, who is no less than his own father and also P.W.17, Mohan Thakur. The balance amount drawn against the second cheque as already noted above was recovered from his residence.

**14.** From the above analyse of the entire evidence, I find that the following circumstances stand established beyond any reasonable doubt:

- 
- (i) The Revisionist-Accused was an employee under the Complainant, P.W.1, Ramesh Kumar Agarwal.
  - (ii) During his employment the Revisionist-Accused was responsible for deposit and withdraw of money on behalf of his employee.
  - (iii) That the Revisionist-Accused had forged two cheques for Rs.2,60,000/- and Rs.4,30,000/- respectively and withdrawn those sums posing as 'Manoj'.
  - (iv) The Revisionist-Accused deposited Rs.2,60,000/- withdrawn against the first cheque in his own Savings Bank Account held by him in the IDBI Bank, Gangtok Branch.
  - (v) Against the sum drawn from the second cheque he kept Rs.3,00,000/- in custody of his relative in Nepal and the balance in his house at Tintek from where Rs.1,31,500/- was recovered.
  - (vi) The Revisionist-Accused had made disclosure statement under Section 27 of the Indian Evidence Act, 1872, to the police while in custody

on the basis of which recovery of Rs.1,31,500/- was made from his residence at Tintek busty.

All these proved circumstances lead to the sole conclusion of the Revisionist-Accused having committed the offence charged against him.

**15.** Under these circumstances, I see no reason to interfere with the impugned judgment on the grounds set out in the Revision Petition.

**16.** In the result, the Revision Petition stands dismissed.

**17.** No order as to costs.

**18.** The Revisionist-Accused shall appear before the Learned Judicial Magistrate, East Sikkim at Gangtok on 14-05-2013 at 10.30 a.m. and the Learned Judicial Magistrate, East Sikkim at Gangtok shall ensure execution of the sentence passed in G. R. Case No.17 of 2006.

**19.** Let a copy of this judgment along with the original records of the case be transmitted to the Learned Judicial Magistrate, East Sikkim at Gangtok forthwith by a Special Messenger for its due compliance.



**20.** A copy of this judgment be also transmitted to the Learned Sessions Judge, Special Division – I, Sikkim at Gangtok.

**21.** The Learned Additional Public Prosecutor shall convey the above findings and direction to the prosecuting agency for taking necessary steps in terms thereof.

Sd/-  
( S. P. Wangdi )  
**Judge**  
13-05-2013

Approved for reporting : Yes/~~No~~

Internet : Yes/~~No~~