

**IN THE HIGH COURT AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD**

**CRIMINAL APPEAL No. 55 OF 2009**

The State of Maharashtra through  
Public Prosecutor, High Court,  
Bench at Aurangabad.

**....Appellant,  
(Ori. Complainant)**

**Versus**

1. Prabhakar Karbhari Ghatmale,  
Age:- 56 years, Occu. Government  
Service, R/o At present Wardha.

2. Jayalal Ganeshlal Kasaliwal,  
Age:- 52 years, Occu. Government Service,  
R/o at present Bhandara.

**....Respondents.  
(Ori. Accused Nos. 1 and 3)**

Shri. R. V. Dasalkar, APP for appellant/State.

Mr. N.L. Choudhary, Advocate for respondent No. 1.

Shri. A.G. Godhamgaonkar, Advocate for respondent No. 2.

**WITH  
CRIMINAL APPEAL NO. 56/2009**

The State of Maharashtra through  
Public Prosecutor, High Court,  
Bench at Aurangabad.

**... Appellant.  
(Ori. Complainant.)**

**Versus**

Mandan Ashok Amdekar,  
Age:- 57 years, Occu. Government  
Service, (Under suspension)  
R/o 100/A, Anand Sagar  
Presidency, Hutatma Maruti Kumar  
Road, Opposite Khopat S. T. Depot  
Gate, Thane (West) 400 602.

**...Respondent.  
(Ori. Accused Nos. 2)**

Mr. R.V. Dasalkar, APP for appellant/State.

Mr. V.J. Dixit, Sr. Counsel h/f. Mr. Mukul Kulkarni, Advocate for  
respondent.

**WITH  
CRIMINAL APPEAL NO. 430/2001**

The State of Maharashtra  
Through : City Police Station,  
Subhash Shankat Sawant,  
Age:- 48 years,  
G.M. Government Milk, Dhule.

**....Appellant  
(Ori. Complainant)**

**VERSUS**

1. Vasant Lukudu Pawar,  
Age:- 52 years,  
Occupation: Manager,  
Chilling Plant, Sakri,  
Dist. Dhule.
2. Angansing Anantsing Shinde,  
Age:- 50 years,  
Occupation: Senior Assistant.
3. Ramesh Shankar Deore,  
Age:- 43 years,  
Occupation: Assistant Store Keeper,
4. Dattatraya Narhar Kulkarni,  
Age:- 48 years, Occu.: Store Keeper.

Accused Nos. 2,3 and 4  
Residence of Government Milk Scheme  
Dhule.

**....Respondents  
(Ori. Accused Nos. 4 to 7)**

Mr. R.V. Dasalkar, APP for appellant/State.  
Shri. C. R. Deshpande, Advocate for R. 1 to 4

**WITH  
CRIMINAL REVISION APPLICATION NO. 145/2008  
WITH  
CRIMINAL APPLICATION NO. 2513 OF 2018**

Shri. Mandan Ashok Amdekar  
(Mandal Ashok Ambekar)  
Age:- 65 years, Occupation: Pensioner  
Resident of: 100/A, Anand Sagar Residency,  
Opposite Khopat S. T. Depot Gate,  
Thane (West),

Presently in jail

... **Applicant**

**Versus**

The State of Maharashtra

... **Respondent**

Mr. V.J. Dixit, Sr. Counsel h/f. Mr. Mukul Kulkarni, Advocate for applicant.

Mr. R.V. Dasalkar, APP for respondent/State.

**WITH  
CRIMINAL REVISION APPLICATION NO. 146/2008**

Prabhakar s/o. Karbhari Ghatmale,  
Age 65 years, Occu. Nil.,  
R/o. Plot No. 40, Durga Nagar,  
Trimurti Chowk, CIDCO-4,  
Nashik-9.

... **Applicant  
(Ori. Accused No.1)**

**Versus**

The State of Maharashtra

... **Respondent**

Mr. N.L. Choudhari, Advocate for applicant.

Mr. R.V. Dasalkar, APP for respondent/State.

**CORAM : T.V. NALAWADE AND  
M.G. SEWLIKAR, JJ.**

RESERVED ON : 18/02/2020

PRONOUNCED ON : 29/05/2020

**JUDGMENT : [PER T.V. NALAWADE, J.]**

1) The proceedings are filed either against the decision of R.C.C. No. 92/1996 (original proceeding) or against the decision given in appeals which were filed to challenge the decision of conviction given in R.C.C. No. 92/1996 by the Trial Court. R.C.C. No. 92/06 was filed by the State in C.R. No. 123/1992 which was registered in Dhule Police Station for the offence punishable under sections 409, 420, 465, 467, 468, 471, 471-A, 477-A, r/w. 34 of Indian

Penal Code (hereinafter referred to as 'I.P.C.' for short). The Trial Court convicted accused Nos. 1 to 3 of this case by the judgment and order dated 21.8.2001 for the offences punishable under sections 420 r/w. 34 of Indian Penal Code. Each of the three accused was sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/- and in default of payment of fine, they were to undergo, simple imprisonment for six months. These three accused were convicted for the offence punishable under section 465 r/w. 34 of I.P.C. also and under that section, each of them was sentenced to suffer rigorous imprisonment for one year. They were acquitted of the remaining offences. When seven accused were tried, the remaining accused, except the aforesaid three, were acquitted by the Trial Court of all the offences. Accused Nos. 1 and 3 filed Criminal Appeal No. 17/2000 in Sessions Court, Dhule. By the decision dated 18.6.2008 the learned Sessions Judge allowed this appeal partly of accused No. 1. The decision of conviction given for the offence punishable under section 420 of I.P.C. against accused No. 1 was set aside by the Sessions Court and accused No. 1 came to be convicted for the offence punishable under section 417 of I.P.C. The first appellate Court has convicted accused No. 1 for this offence and he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.5,000/-. The conviction given for the offence punishable under section 465 r/w. 34 of I.P.C. against accused No. 1 is maintained by the learned Sessions Judge. Accused No. 3 is

acquitted of all the offences by the first appellate Court. Accused No. 2 had filed separate appeal No. 21/2001 to challenge the decision of conviction given against him by the Trial Court. That appeal is also partly allowed by the learned Sessions Judge by the common judgment dated 18.6.2008. The conviction given for the offence punishable under section 420 r/w. 34 of I.P.C. to this accused is also set aside and he is convicted for the offence punishable under section 417 r/w. 34 of I.P.C. Similar sentence is given to him which is given to accused No. 1. The conviction given to him for the offence punishable under section 465 r/w. 34 of I.P.C. by the Trial Court is confirmed by the first appellate Court. Due to this decision of Sessions Court, the State has filed Criminal Appeal No. 55/2009 and 56/2009 in this Court. As accused Nos. 1 and 2 are convicted by the Trial Court and first appellate Court, they have filed Criminal Revision Nos. 145/2008 and 146/2008. As the Trial Court had acquitted accused nos. 4 to 7 of all the offences State has filed Criminal Appeal No. 430/2001 against that decision in this Court. The proceedings are filed as per the procedure which was in existence at the relevant time before the amendment of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.' for short). All the sides are heard in all the proceedings.

2) In short, the facts leading to the institution of the aforesaid proceedings can be stated as follows :-

All the seven accused were employees of the State Government run Milk Dairy from Dhule District. Accused No. 1 - Prabhakar Ghatmale was the General Manager of the District Dairy. Accused No. 2 - Mandal Ambdekar was working as the Manager of Dhule District Dairy. Accused No. 4 - Vasant Pawar was working as a manager of Sakri Chilling Plant, Dairy of Tahsil Sakri. Accused No. 3 - Jayalal Kasliwal was serving as Store Officer of District Dairy, Dhule. Accused No. 5 - Angansing Shinde was working as Senior Assistant of District Store Department, Dhule. Accused No. 6 - Ramesh Deore was serving as a Store Clerk in District Dairy. Accused No. 7 Shri. Kulkarni was working as Store Keeper of District Dairy, Dhule.

3) The Commissioner was immediate superior officer of General Manager of District Dairy. There was procedure to collect information about the requirement of milk cans every year from all the districts functioning under the jurisdiction of Commissioner. The office of Commissioner used to publish tender notice for inviting tenders for supply of such cans. The Committee headed by the Commissioner used to place the order of supply with different contractors. Though the order of supply of cans used to be issued by the office of Commissioner, the payments were made in respect of supply of cans by concerned District Dairies as per the supply made to them.

4) For the year 1990-91, as per the aforesaid procedure, the office of Commissioner gave orders to three contractors for supply of cans. Dhule district was also to get such cans and it was to collect some cans for other districts also. Dhule District Dairy was to make payment only in respect of the cans which were supplied for use of Dhule District.

5) The informant Sawant took over the charge of the post of General Manager of District Dairy Dhule from accused No. 1 in the year 1992. He received complaints that actual supply of cans was less than the quantity shown to be purchased on record by Dhule district. There were allegations that the cans which were supplied were not as per the specifications, expected standards. There were complaints like complainant from Sakhari Dairy that new cans were not supplied, but old cans were supplied to it after renovation and all of them had leakages. It was noticed that all the cans which were shown to be supplied to Dhule district were of no use due to aforesaid circumstances. Thus, there were indirect allegations that there was misappropriation of Government money and that was done by using aforesaid modus operandi.

6) The State Level Committee was constituted and the committee made inquiry in to the aforesaid allegations. During inquiry physical verification of cans from entire Dhule district

including Sakhari Tahsil Dairy was done. Sample cans were collected for examination of the quality. The statements of concerned employees of dairies were recorded. During inquiry, some accused admitted that many cans mentioned in the record of Dhule district were actually not received, but some manipulation in the record was done to see that the figure of the record matches with the figure of the cans for which payment was to be made. The inquiry revealed that whatever cans were supplied were also of sub standard, they were not as per the specifications given in the supply order.

7) Shri. Sawant, the General Manager, then gave F.I.R. After the aforesaid inquiry and on the basis of this F.I.R., the crime at C.R. No..123/1992 came to be registered for aforesaid offences. During investigation, police also recorded statements of the employees of dairy from Dhule district and collected relevant record. As there was some over writing and manipulation, specimen hand writing of accused No. 2 was collected and it was sent to expert along with the relevant record for comparison. The inquiry and the investigation revealed that accused No. 1 had asked other accused to keep silence in respect of the manipulation of the record which was done to cover up shortage and inferior quality of the cans. During inquiry, some accused admitted that they had received monetary consideration for such cover up, for manipulation of the record.



8) The investigation revealed that at two places like Dhule and Sakri expected number of cans were not available as they were not supplied, but the amount in respect of the cans which were not supplied was paid to the suppliers, contractors. It revealed that 600 cans were not actually supplied, but the price of those cans was paid to the contractors. The investigation revealed that the quality of all the cans supplied was not as per the specifications, they were of inferior quality. It revealed that the cans which were actually supplied were of no use due to leakages and due to the inferior quality. Thus, it revealed that there was misappropriation of Government money and it was done by using aforesaid modus operandi. After completion of investigation, proposal was sent to Chief Secretary of Dairy Development Department of State Government and after getting sanction, the chargesheet came to be filed for aforesaid offences.

9) Charge was framed against all the accused persons for aforesaid offences. All the accused pleaded not guilty. Prosecution examined in all 22 witnesses. In the statement given under section 313 of Cr.P.C., the accused took the defence of total denial. They contended that they were not expected to check either the quantity or the quality of the cans and it was the job of the committee which was created for this purpose. They filed written say and additional written say under section 313 of Cr.P.C. However, no defence witness was examined by them.

10) The Trial Court considered the duties assigned to all the accused persons, the evidence given on physical verification of cans and the record like registration of cans done in the register of store department and dairy section. The Trial Court considered the extra judicial confessional statements in which creation of false record was admitted by some accused. The Trial Court considered the opinion of the Hand Writing Expert in respect of the manipulation done of the record and which was done by accused No. 2. The Trial Court held that the prosecution has proved that 560 cans were actually not supplied, but the price was paid and so, the loss of price of those cans was caused to the Government by using such modus operandi. The Trial Court held that as accused No. 3 was incharge of store department, without his connivance such manipulation could not have been done and the bills could not have been paid. The Trial Court held that these things could not have happened unless accused No. 1 was party to these things. The Trial Court gave benefit of doubt to other employees, accused Nos. 4 to 7 by holding that they were subordinates to the convicted accused and they had no chance or occasion to do it independently. The Trial Court did not convict accused Nos. 1 to 3 for the offence of misappropriation of Government money, but it convicted them for the offences punishable under sections 420, 465 and 34 of I.P.C. As already observed, the first appellate Court has given the decision of acquittal

in favour of accused No. 3 and only accused Nos. 1 and 2 are now convicted, but for the offence punishable under section 417, 465 r/w. 34 of I.P.C. The sentence is reduced by the first appellate Court of accused Nos. 1 and 2 from three years to one year imprisonment.

11) Before this Court there are proceedings which have directly come up from the Trial Court to challenge the acquittal and there are proceedings in which the decision of the first appellate Court is challenged. As already observed, separate proceedings were filed due to procedure which was prevailing in Cr.P.C. at the relevant time. In view of these circumstances, this Court holds that it is this duty of the Court to consider and appreciate the entire evidence.

12) Sawant (PW 1), the first informant has given evidence on the manner of working of the Government dairy in the districts and on the procedure of creation of record when such purchases are made in the district. He has deposed that the committee working under the control of Commissioner checks the quality of cans, but that is done by examining only samples. Thus, he has tried to say that at the initial stage when manufactures submit the samples, only those samples are checked by the committee and manufactures are expected to manufacture the cans as per the those samples. He has given evidence that when cans are actually delivered to the District Dairy, the Store Officer checks each can to ascertain as to whether it

is as per the specifications given in the purchase order by the office of Commissioner and only after that the delivery is accepted. He has deposed that the Store Officer then makes entry of the cans in stores journal and then in ledger. He has deposed that it is the duty of the General Manager to ascertain that the quantity of cans is as per the purchase order and the cans are as per the specifications given for the quality. Thus, evidence is given that the General Manager is expected to approve the cans before making the payment. He has deposed that after verification, Store Officer issues certificate, and if the Store Department is satisfied with the quality and the General Manager is also satisfied, then the General Manager counter signs the certificate issued by the Store department. He has deposed that then the certificate goes to the account section for payment. Thus, Sawant (PW 1) has given specific evidence that the bills in respect of cans supplied to the District unit and Tahsil unit are presented at District level and only after verification of aforesaid things, the bills are to be paid.

13) Sawant (PW 1) took over the charge of the post of General Manager from accused No. 1, but prior to that he was working in District Dairy Dhule itself as Development Officer. His evidence shows that in Dhule (on 25.7.1991) when in the meeting called by Tahsildar Sakri it was informed that there were complaints from Kori Dhudh Sanghatna, a collection center from Sakhari Tahsil

about the cans, he visited Kori and inspected the cans supplied to that center. He has deposed that he has noticed that there were leakages in the cans supplied and that supply was made during the year 1990-91. He has deposed that they were old cans and after renovation they were sent to this center as new cans. He has deposed that he informed about the complaints and his observations to General Manager and accused No. 1 was working as General Manager at the relevant time. He has deposed that though he had submitted report in respect of complaints, no action was taken by accused No. 1 on that report. He has deposed that he had sent copy of complaint to regional office also. In the Court, he has produced copy of letter dated 29.7.1991 in support of his oral evidence. He has deposed that on the basis of this complaint, initially Vigilance Section of the Division made inquiry and submitted the report to Commissioner and after that a team of three officers was created as committee and it was sent for making inquiry. He has deposed that the Committee constituted of General Manager of Greater Mumbai Milk Scheme, Deputy Dairy Development Commissioner (Engineer) and Deputy Development Engineer (Financial Advisor). He has deposed that they made inquiry and submitted report to the Government and then the Assistant Secretary of Dairy Development Ministry directed him to give F.I.R. under a letter. That letter is given Exh. 50 by the Trial Court and the F.I.R. given by Sawant (PW 1) is proved as Exh. 51. The contents of Exh. 51 are consistent with the

oral evidence of PW 1.

14) Though it can be said that the first informant has not given the substantive evidence in support of shortage of cans and the quality, the other record like his report is exhibited. There is other substantive evidence to prove these things. The case of the prosecution that 4050 cans which were supplied were of inferior quality and they were useless was also mentioned in the F.I.R. It was mentioned that 600 cans were less and as per the value of each can, the total loss which was caused was of around Rs. 34.45 lakh and there was misappropriation of this amount.

15) In the cross examination of Sawant (PW 1), the defence has brought on the record that whatever cans which were received by the District Dairy were in balance in the godown, in the store section, were of no use for keeping milk. It is brought on the record that only after supply of cans as per the procedure the bills are required to be prepared and paid. He has given specific evidence that the value of the cans actually supplied was zero as they were of no use for which they were purchased. The record, reports prepared by him like Exhs. 118 and 122 was confronted to him by the defence in his cross examination and so, that record can be read in evidence against the accused persons.

16) The tenor of the cross examination of all the prosecution witnesses, the statements given under section 313 of Cr.P.C. by all the accused and the judgments delivered by the two Courts show that the defence did not dispute that inquiry on which evidence is given by PW 1 was actually made and on the basis of that inquiry, the Government had taken decision to lodge the F.I.R. There is also no dispute about the sanction given by appropriate authority to file the case against the accused.

17) There is record like letter of Additional Secretary of Agricultural, Fishery and Dairy Ministry of the State Government showing that only after making inquiry and receipt of the report of inquiry, the Government took the decision to take criminal action. This record shows that two kinds of modus operandies were used like short supply of cans, but creating record of supply of entire quantity and accepting inferior quality of cans which were mostly renovated by using the old ones.

18) Sawant (PW 1) was working as General Manager when he gave evidence in the Court. The tenor of the cross examination shows that defence did not dispute that he had knowledge about the procedure which was required to be followed in respect of such purchases and creation of record of the purchase. He took the charge of the post on 14.1.1991 and his evidence shows that he had verified

the things before giving of the F.I.R. His evidence is specific as against accused No. 1 - General Manager and accused No. 3 - Store keeper. His evidence shows that he has not given substantive evidence as against accused No. 2, the Manager of District Dairy that he had created false record to cover up the things. But, on this point, there is evidence from the other witnesses and there is relevant record in this regard.

19) Virkar (PW 2) was the member of the Committee constituted for making inquiry in to the allegations. He was Senior Administrative Officer of Nashik region under which Dhule district was functioning. His evidence is of following nature :-

(I) Infact 400 cans were not supplied to processing unit, milk dairy of the district by the stores department of the district, but such entries were made in record of store department. For forming such opinion, he gave following reasons :-

(a) There is register maintained in Store Department of the District Dhule to make entries of cans received and cans distributed. This register appeared to be verified on 19.6.1991 as per the endorsement made by Supervising Authority, Directors of Accounts and Treasury. Exactly above this endorsement of verification entry dated 13.5.1991 was found to be made of demand of 200 cans



and this entry was made for dairy section. There was no corresponding entry of the receipt of these 200 cans in dairy register of the district. Even the end entry in the dairy register did not show that any new can was received in May 1991. The can's Store Register is maintained by Store Officer (accused No. 3). Below entry dated 13.5.1991 in the can's Store Register, there are signatures of Store Keeper and Senior Assistant (accused Nos. 7 and 5 respectively). This entry is proved as Exh. 54 in the evidence of PW 2.

(b) The entries in Stores Can Account Register showed that on 24.6.1991, 200 new cans were shown to be supplied to dairy section of Dhule. This entry was made by accused No. 2 who was working as Store Keeper in Store Department. In respect of these 200 cans shown to be supplied, there is no corresponding entry in Can Account Register of Dairy Section of Dhule district. When Dairy Supervisor Shri. Dande had made demand of two items like rubber rings and air vent, new entry of demand of 200 cans was made in the indent by accused No. 2 subsequently. After making such entry, the indent was further manipulated by accused No. 2 to correct the number of items demanded and the number of items was changed to make it number 3. Overwriting bears the signature of accused No. 7 also. Accused No. 2 had signed as the person

who had received these cans.

20) Virkar (PW 2) has given evidence that by using similar modus operandi more cans were shown to be supplied to Sakri by Store Section of district Dhule. He has given following reasons for arriving at this conclusion :-

(i) The indent at Exh. 64 dated 11.6.1991 bearing No.40617 was submitted by accused No. 4 who was Manager of Sakri Chilling Plant and he had made demand of 100 cans initially to District Stores Department. In this indent, the figure 100 was changed to make it 300 by doing overwriting. This indent was bearing signature of accused No. 4.

(ii) The indent at Exh. 65 bearing No.40616 does not bear any date, but it was submitted by accused No. 4 to District Stores Department, Dhule. This indent shows that 80 cans were demanded by Sakri and it shows that Sakri section received these cans and they were received by accused No. 4. This indent does not bearing signature of sanctioning authority or any officer who had issued the cans from Stores Department Dhule.

21) The record in respect of Sakri Chilling Plant like Exhs. 64 and 65 mentioned above needs to be considered with oral evidence

of other witnesses and the oral evidence of Virkar (PW 2).

22) Virkar (PW 2) has deposed that the entry in respect of indent No. 40616 was subsequently inserted in Can Register, Exh. 54. He has deposed that this was done by somebody subsequently as there is overwriting on this entry also and overwriting is appearing in totalling done about the cans supplied.

23) The evidence of Virkar (PW 2) shows that during inquiry he went through the Can Register of Dhule Dairy Section (Exh. 55 to 57) and he made such endorsement on that record. He has deposed that he had paid visit to Sakri Chilling Plant for inquiry. He has deposed that with other members of inquiry Committee he made inquiry with Dhule District Dairy employees who include accused persons.

24) In the evidence of Virkar (PW 2), the statements given by accused Nos. 1, 2 and 7 are proved. They bear signatures of Virkar (PW 2) and other officers like Bhalerao and also accused persons. These statements are at Exhs. 77, 78 and 76, respectively. Similarly the statements of other accused are proved in the evidence of Virkar (PW 2). The statement of accused No. 6 – Ramesh is at Exh. 86. One more statement of accused No. 7 – Dattatraya is at Exh. 87. The statement of accused No. 3 – Jayalal Kasliwal is at Exh. 89 and the

statement of accused No. 5 is at Exh. 90.

25) Virkar (PW 2) has given evidence on previous and subsequent conduct of accused No. 1. He has deposed that as per the procedure, when inquiry was made with Dhule District Dairy about the requirements of cans in 1990, by letter dated 5.10.1990 accused No. 1 had initially informed that there was no need of milk cans in Dhule. He has deposed that by subsequent letter dated 22.10.1990 accused No. 1 gave requisition for 3800 cans. This letter of accused No. 1 is proved as Exh. 72. Virkar (PW 2) has deposed that as per the practice and the rules, steel cans can be used for storing milk and in Exh. 72 order of only milk cans was placed. He has deposed that aluminum cans can be used for storing Ghee and creme and there is circular of Dairy Development Department in that regard. He has deposed that cans were ordered as per Exh. 72 by giving supply order to the contractors and accused No. 1 made payment in respect of cans shown to be supplied by record of stores sections of Dhule District.

26) Virkar (PW 2) has deposed that when inquiry was started and cans were found less, accused No. 1 informed to him through Accounts Officer Shri. Vaidya and Deputy Dairy Manager that he was ready to replace the cans which were not supplied. Virkar (PW 2) has deposed that he communicated this request of accused No. 1 to

inquiry member Shri. Bhalerao and other members of inquiry team. He has deposed that accused No.1 was asked to give such application, but he did not give such application. He has deposed that accused No. 1 attempted to unload cans from one truck at Dhule Dairy. He has deposed that Security Officer Shri. Bambidkar did not allow accused No. 1 to unload these cans at District Office. He has deposed that the truck was then seized by police and it was taken to police station. According to him, there were 275 cans in this truck.

27) Virkar (PW 2) has deposed that accused No. 1 was Administrator of Dhule Tahsil Dairy and it revealed that accused No. 1 unloaded 50 cans in this dairy after starting of inquiry due to aforesaid circumstances. He has deposed that behind the back of supervisor, accused No. 1 unloaded 100 cans at Sakri Chilling Plant also. He has deposed that as per the instructions of accused No. 1, Supervisor Shri. Pagar from District Office of Dhule had gone to Sakri for unloading these cans. Thus, evidence is given by Virkar on the subsequent conduct of the accused and it shows that he tried to cover up the things and manipulate the things by making attempt to produce the cans which were not supplied as per the record.

28) In the evidence of Virkar (PW 2), the statements of employees are duly proved. These statements will be discussed with

the oral evidence. Three reports of inquiry submitted by inquiry Committee are proved in the evidence of Virkar which are at Exhs. 96 to 98. Some circulars issued by Government Department are exhibited and proved as Exhs. 99 and 100.

29) To impeach the credit of Virkar (PW 2), in the cross examination, it was suggested to him that there was complaint against him with the department that he had done misappropriation of Rs. 9.3 lakh by committing breach of trust and he was kept under suspension for some time. It was also suggested to him that accused No. 1 had made inquiry against Virkar at that time. The witness has denied that accused No. 1 had made inquiry. The defence has not produced any record of that inquiry in the present matter. There is nothing on the record to show that Virkar was held guilty of any lapse of such kind in the past.

30) The evidence in the cross examination of Virkar (PW 2) shows that the Committee which selects contractors and which gives order of supply to contractors examined only sample cans. He has deposed that cans should be as per the specifications given in the order. Virkar has deposed that each milk scheme keeps register even at the entrance of the campus in which entry is required to be made. The procedure about giving of requisition to Store Department by giving indent is also brought on the record in the cross examination

of this witness. His evidence remained unshattered during the cross examination.

31) Bhalerao (PW 15) was member of inquiry Committee. His evidence shows that he assisted Virkar (PW 2) in the inquiry. His evidence is similar to the evidence of PW 1 and PW 2.

32) Bhalerao (PW 15) has given evidence that accused No. 1 had attempted to supply cans after starting of the inquiry as cans were found short, but the Committee had not allowed such adjustments. In the cross examination, it is brought on the record in his evidence that the suppliers were also involved in the commission of this offence.

33) In the evidence of Bhalerao (PW 15), one report of inquiry is proved as Exh. 207. The panchanama of seizure of record from Dhule prepared by police is proved in his evidence as Exh. 209. The panchanama of seizure of sample cans from Dhule for quality testing which is also prepared by police is proved as Exh. 210 in his evidence. The panchanama of seizure of some sample cans from Sakri prepared by police is proved in his evidence as Exh. 211. The panchanama of seizure of Journal Store Register, Can Account Register from Dhule is proved as Exh. 212 and panchanama of samples supplied by contractors for approval is proved as Exh. 213 .

34) In the cross examination of Virkar (PW 2), defence has brought on the record that Virkar had recommended to the Government Department to make accused No. 2 a witness in the case and tender pardon to him. Virkar has denied that he had given such promise to accused No. 2 and due to that accused No. 2 had given statement in which he had admitted everything and he had described the role played by the other accused like accused No. 1. It is brought on the record that Virkar was of the opinion that not only the accused persons, who faced the trial, but the contractor, who had supplied the cans had committed the offence. The circumstance that police did not file case against the contractor cannot help in any way to accused persons who faced the trial as it is they who had created false record of supply and it is they who had misappropriated the money by cheating the Government.

35) This Court has carefully gone through Exhs. 64 and 65 and they are in respect of Sakri Chilling Plant. This record which is duly proved is consistent with the version of Virkar (PW 2) that the indents are manipulated to show that there was actual supply of cans demanded to district Dhule. The other record like explanation given and statements given by the employees of the district Office of Dhule is being discussed at other place.



36) Tinaikar (PW 3) is other officer of this department who had worked as member of the Committee which made the inquiry. He was General Manager of Greater Bombay Milk Scheme at the relevant time. In his evidence, the record like tender notice published, the order issued to contractors to supply milk cans is proved. His evidence shows that 5700 cans were to be supplied to Government Milk Scheme Dhule. His evidence also shows that initially it was informed by Dhule Office that there was no need of such cans, but subsequently, demand was made and there was order to supply 4650 cans and they were to be supplied by three contractors.

37) Tinaikar (PW 3) has given evidence that there was complaint about the quality of the cans which were received by Dhule Dairy and the cans were examined to ascertain the quality and it transpired that the cans were not as per the specifications.

38) Tinaikar's evidence about creation of false record by Store Section of Dhule Office to show that 400 cans were supplied to Dhule Dairy by Store Section is similar to the evidence given by PW 1 and PW 2. He has given evidence that in respect of supply of cans to Sakri Chilling Plant and false record. He has deposed that when as per the record for the year 1990-91 only 414 cans were manufactured, supply of 580 cans was shown to be made to Sakri

Station and this circumstance also supports that there was short supply of the cans. Thus, one more reason is given by this witness to prove that there was a false record and false record was created to cover up the the short supply of the cans. In the cross examination, it is brought on the record that actual verification was done to ascertain aforesaid things.

39) In the evidence of Tinaikar (PW 3) more statements of accused and witnesses are proved. The report prepared by him about the inquiry made by him is proved as Exh. 117. The intimations of acceptance of tender of contractors are proved as Exhs. 103 to 105. His evidence and the record show the procedure for such purchase. The procedure shows that before actual supply, sample cans were to be supplied for approval. His evidence shows that the specifications were mentioned in the schedule of the record exchanged with the contractors in respect of the cans. There is no dispute over this record.

40) Abdul Salam (PW 4) was a Mechanical Engineer and other member of the Inquiry Committee. He has given evidence which is similar to the evidence of PW 2 and PW 3. His evidence also shows that the cans were examined to ascertain as to whether they were as per the norms of IS-1373-1967 Part II. The evidence of PW 3 and PW 4 and the record show that when the thickness norm was

changed in the year 1981 to make the cans more thicker than the previous norms, but these new norm were not insisted and right from beginning, things were done for the benefit of the contractor. Even the time schedule for supply of cans by the contractor was changed to extend the time. The evidence of Abdul Salam (PW 4) in the cross examination shows that there was no compliance of 95% of the specifications mentioned in the contract. In his evidence, report of inspection of cans which was done to ascertain as to whether they were as per the specifications is proved as Exh. 114 and this report is consistent with the oral evidence of Abdul Salam.

41) Pawar (PW 5) was also the member of aforesaid Inquiry Committee. At the relevant time, he was working as Deputy Development Commissioner (Engineer) and he was posted in the office of Commissioner, Mumbai. His evidence also shows that the Committee inspected the cans physically by testing them for eight specifications as per specifications given by the department in the year 1968. He has deposed that none of the can was found as per the specifications. In the tender notices and one work order, the specifications mentioned by the department of the year 1981 which were more strict were mentioned and they ought to have been followed, but neither of the two specifications were followed by the contractor. Pawar (PW 5) had signed the Inquiry Report which is at Exh. 114 and his suggestions are proved as Exh.116. This record is

consistent with the oral evidence of Pawar. Exh. 118 is in respect of inspection of cans from Sakri Chilling Plant and Exh.119 is the record/report in respect of inspection of cans which was done at various stations at Dhule District. Exh. 120 is Inspection Report of Sakri Station. In report at Exh. 121, there is mention about the less cans found at Tahsil places when the cans which were available and the record of supply from District Store was compared. The record from District Store Office showed that more cans were supplied, but they found that only 80 cans were there at Tahsil places like Sakri station. There is also record proved in the evidence of this witness to show that subsequently in October 1991 some cans which were without record were found. It is already mentioned that to cover up the things such cans were dumped, offloaded at the station at the instance of accused No. 1 and on that also, there is separate and specific evidence from witnesses.

42) The evidence of Choudhary (PW 6) who was Dairy Supervisor of District Dairy Dhule is important as it is for proving forgery committed by accused No. 2 in respect of indents. He has deposed that he had demanded only three items in indent at Exh. 62 like costic soda bag, one jar of nitric acid and 12 gaskets. His evidence shows that he had arranged to collect only these three items of 13.5.1991. He has deposed that he had not demanded any milk can in Exh. 62 and the hand writing appearing on Exh. 62 in

respect of demand of 200 cans is of other person and it is not his hand writing. He has deposed that when he had mentioned the number of the items as three, the number was changed to make it four and that was also not done by him. He has deposed that accused No. 2 Ambdekar had signed on this record to show that he had received 200 cans when such demand was not made on Exh. 62. He has deposed that he had collected only three items as per the indent and he had made entry of only three items in dairy section. He has further deposed that there was no need of such cans for dairy section of Dhule district and no such cans were actually received by the dairy under Exh. 62. He has deposed that in can register, Exh. 56 of dairy also no entry was made to show that 200 cans were received under Exh. 62. Exh. 56, the can register bears signatures of Ambdekar, accused No. 2. But, this also does not mention that 200 cans were received by dairy section of Dhule Office under Exh. 62. The cross examination of Choudhary (PW 6) is only on the procedure. He has answered all the questions put to him and his evidence was not shaken in the extensive cross examination. There is no inconsistency in his oral evidence and the documents which are duly proved. The Trial Court believed this witness. He has admitted that his statement was recorded during inquiry made by aforesaid Committee and statement is proved as Exh. 126. This record is also consistent with his oral evidence.

43) Dhande (PW 7) was also working as Dairy Supervisor in Dairy of Dhule district. His evidence shows that for different shifts different Supervisors were working in dairy section of Dhule. His evidence is on the indent which is proved as Exh. 63. According to him, on 24.6.1991 he had sent Exh. 63 and he had demanded only two items under this indent like two rubber rings and six air vents. He has deposed that only these items were written by him and they are in his hand writing on Exh. 63. He has deposed that the attendant deputed by him had collected only these two items on the same day and entries of only these two items were made in the record of dairy section on that day. He has deposed that entry of 200 cans appearing on Exh. 63 was not made by him and it is in the hand writing of accused No. 2 Ambdekar. He has deposed that the entry of cans was subsequently made by accused No. 2. He has deposed that there was no need of cans for dairy and so, there was no question of making demand of such cans. He has deposed that no such cans were actually received by dairy section of Dhule district under Exh. 63. He has deposed that no entry of such 200 cans was made in the register of dairy to show that they were received by dairy. This register is at Exh. 57 and it is already referred. He has deposed that in the can register of that month which is at Exh. 58 also there is no entry to show that such cans were received by dairy section. He has deposed that Exhs. 57 and 58 both bear signatures of accused No. 2 Ambdekar. Thus, on one hand accused No. 2 created the record of

demand and acceptance of the cans for dairy, but he did not make entries of these cans in the register of dairy and as per the evidence, these cans were not actually received by dairy section of Dhule district.

44) Dhande (PW 7) has deposed that on the indent, accused No. 2 had written 200 cans subsequently and he had signed on it in token of having received 200 cans under Exh. 63. Such statement was given by him during inquiry and that statement is proved as Exh. 128. The defence has cross examined Dhande at length, but his evidence remained unshaken in the cross examination. The Trial Court has believed this witness also and this Court sees no reason to disbelieve this witness. Thus, the evidence of Choudhary (PW 6) and Dhande (PW 7) is on forgery done by accused No. 2 to manipulate the record.

45) Dattatraya Patil (PW 8) was Shift Manager of dairy section of Dhule district. He has given evidence on the nature of duties assigned to him. His evidence is on Exhs. 56 and 57, the dairy register of Dhule district. It shows that under Exhs. 62 and 63, no cans were received by dairy section either on the dates mentioned on the indent or on any date subsequent thereto. The entries in the register and abstracts at Exhs. 56, 57 and 58 are in his hand writing and he has given evidence that he has made those entries. It is

suggested to him by defence that he signed on the register subsequently, and at one time, but he has denied this suggestion. This record does not show that this record was created subsequently.

46) Tukaram Wagh (PW 9) the attendant who actually collected the items demanded by Choudhary (PW 6) under Exh. 62 has given evidence that only three items were demanded in the indent and only three items which were mentioned were collected by him. He has deposed that no cans were demanded under Exh. 62 and such cans were not received by him. His signature is on Exh. 62 in token of having received three items demanded by Choudhary. He has admitted his statement at Exh. 132 recorded by Inquiry Committee. His evidence also remained unshattered in extensive cross examination. It is already mentioned that accused No. 2 had signed on Exh. 62 to show that he had personally received such cans. There is no explanation about this record from accused No. 2 other than the admissions given by him of manipulation.

47) Vilas Patil (PW 11) was working as Shift Manager and his evidence is on Exh. 55, extract of cans prepared by dairy section in May 1991. He has given evidence that his signatures is on Exh. 55 as it was prepared by him. This evidence is consistent with the evidence of other witnesses which is already discussed. Thus, it is proved that aforesaid 400 cans were not actually received by dairy section, but



such record was created and this circumstance is not explained by accused No. 2 and no other explanation that his admission before Committee is possible. Vilas Patil (PW 11) was present when police prepared panchanama on 25.7.1992 and this panchanama is proved as Exh. 141.

48) Badgujar (PW 10) was initially working as Chemist at Sakri station and accused No. 4 – Vasant Pawar, the Manager was his colleague at the relevant time. Badgujar knew the hand writing of accused No. 4 and the duties of Manager. He himself worked as Manager for some time as accused No. 4 was not available. His evidence is on the nature of duties of Manager of Sakri Chilling Plant and also on relevant record.

49) The evidence of Badgujar (PW 10) shows that Sakri Manager (accused No. 4) used to send indent to District Store Office for supply of required items and accused No. 4 used to collect the items. He has deposed that accused No. 4 used to maintain the register at Sakri. He has deposed that the entries in Sakri register for the period 1.5.1991 to 30.9.1991 are in the hand writing of accused No. 4 and that document is proved as Exh. 135. He has deposed that on 7.6.1991 no can was received as per this record. He has deposed that on 11.6.1991, 300 cans were shown to be received initially, but by doing overwriting, this figure was changed to make it 380 and

attempt was made to show that total number of cans collected was 497 when initially entry was of 417. He has deposed that one key of godown used to remain with accused No. 4 and he was custodian of the cans. He has admitted his statement which was given before the Inquiry Committee and that record is at Exhs. 71 and 92.

50) Badgujar (PW 10) has given evidence that physical verification of cans from Sakri station was made on 11.10.1991 in his presence and during physical verification 334 cans which were shown to be supplied in the year 1990-91 were found. He has deposed that there were 100 cans shown to be supplied in the year 1991-92, but no entry of these cans was there in the record. He has deposed that the cans of 1990-91 were found to be rusted. The circumstance like attempt was made to cover up things by producing the cans which was found short is already mentioned.

51) Badgujar (PW 10) has given evidence that during inquiry and physical verification of cans supplied to all Milk Centers collecting milk for Sakri Plant was done. He has deposed that all the centers were asked to produce the cans supplied to them on 6.10.1991. He has deposed that verification was done and report at Exh. 119 was prepared. He has deposed that it was noticed that the receipts of 280 cans were prepared by Sakri, but actually 80 cans were issued to various centers by Sakri. Thus, as per record 200 cans

were found less.

52) Badgujar (PW 10) has deposed about the indent at Exh. 64 and the delivery of cans. He has deposed that these cans were to be supplied by Godawari Can Manufacturer Company Aurangabad and Chalan in that regard is dated 10.6.1991. This record shows that 300 cans were actually supplied. This Chalan is at Exh. 136 and it bears signature of accused No. 4. Thus, the indent was prepared by accused No. 4 and it was submitted in Dhule Stores on 12.6.1991, but the Chalan of supply prepared by the contractor is dated 10.6.1991.

53) The evidence of Badgujar (PW 10) shows that in can register of Sakri, entry was made by accused No. 4 of 380 cans on 18.6.1991. Thus, when the contractor had directly supplied 300 cans to Sakri station. Record was created to show that 380 cans were actually supplied. Entries in Sakri register were made by accused No. 4 and the indent at Exh. 65 was also prepared by him. This evidence needs to be read with other evidence that actual cans which were found with Sakri Division were not as per this record i.e. 380 cans and actual cans found were much less. The delivery Chalan of the contractor, Exh. 136 cannot be ignored while considering the evidence given as against accused No. 4.

54) The evidence of Badgujar (PW 10) remained unshattered during cross examination. There is oral evidence of PW 10 and there is record of aforesaid nature against accused No. 4. These circumstances are not explained by accused No. 4. The evidence of subsequent conduct of accused Nos. 1 and 4 is also there. When verification was started on 6.10.1991, 100 cans were unloaded at Sakri to cover up the things. However, due to diligence of Inquiry Committee, the entry of these cans was not made in the register and these cans could not have been considered for matching record of supply. This evidence can be considered as against accused Nos. 1 and 4.

55) Pagar (PW 12) was working as Milk Dispatcher at Dhule District Dairy. He has deposed that on 6.10.1991 he was called to the residential place of accused No. 1 by accused No. 1 and there, accused No. 1 gave direction to him to go with the vehicle and give delivery of cans to Sakri Station. He has deposed that accused No. 1 had given reason that the driver of the transport vehicle did not know the road to Sakri Plant. He has deposed that there was no written order given by accused No. 1. He has deposed that there were around 150 cans in the transport vehicle and he was asked to unload 100 cans at Sakri and remaining 50 cans at Dhule District Dairy. He has deposed that Badgujar (PW 10) allowed them to unload 100 cans at Sakri. He has deposed that when he tried to unload 50

cans at Dhule District Dairy, the watchman of Dhule District Dairy refused to accept the delivery as there was no Chalan in respect of these 50 cans. He has deposed that he had then collected chit about this emergency duty which was to be done by him from accused No. 1. He has deposed that he had given the chit to Joshi, Officer of Dhule District Dairy. This evidence is consistent with other evidence already discussed and it shows that accused No. 1 made an attempt to cover up the things when inquiry started.

56) Bombidkar (PW 13) was working as Assistant Security Officer of Dhule Campus of the Dairy. He has deposed that Inquiry Committee had given him the instruction in September and October 1991 to see that no new can is allowed to be unloaded in the campus. He has deposed that on 6.10.1991 at 5.30 to 6.00 a.m. when he was at home, watchman Pathan informed him that the truck with cans had come to the campus of Dhule Dairy. He has deposed that he went to dairy and noticed that at entrance gate a truck containing cans was present. He has deposed that he asked the driver to show Chalan, but there was no Chalan with the driver. He has deposed that Milk Dispatcher Pagar (PW 12) gave message of accused No. 2 and accused No. 1 that the cans were to be unloaded at Sakri and Dhule. He has deposed that as there was direction of Inquiry Committee in this regard and as there was no Chalan in respect of these cans, he refused to allow to unload the cans in the

campus of Dhule District Dairy. He has deposed that when he did not give permission, the truck was taken away. In his evidence, he has given the number of the Truck as 2097.

57) Bombidkar (PW 13) has deposed that on the same day at 5.30 p.m. another truck bearing No. 5138 came with 275 cans and the driver said that accused Nos. 1 and 2 had directed to unload cans in the campus of Dhule Dairy. He has deposed that on this occasion also, there was no Chalan and so, he refused to give such permission. He has deposed that accused Nos. 1 and 2 then came there, but he refused to them also to give such permission. He has deposed that police jeep then came there and police made inquiry with the truck driver. He has deposed that there was no record with the truck driver and so, police took the truck to police station. According to him, he gave report to Bhalerao, Inquiry Officer and this report is proved as Exh. 144. This record is consistent with the oral evidence of PW 13.

58) Bombidkar (PW 13) has given evidence that on 8.10.1991 he was taken to Sakri by Inquiry Committee and there 100 cans were inspected in his presence and the report at Exh. 94 was prepared. His signature appears on Exh. 94. He has deposed that on 11.10.1991 at Sakri, Physical checking of cans was made and panchanama was prepared in his presence. Exh. 120, the

panchanama bears his signature.

59) In cross examination of Bombidkar (PW 13), it is suggested to him that subsequently 275 cans were taken in custody by Dhule Dudh Sangh on the basis of order from Court. No record is produced in that regard by defence. In any case, such record could not have helped accused persons as these things happened after starting of inquiry and they only show that it was an attempt to cover up the things.

60) Prosecution has examined other witnesses like Bhimrao Wagh (PW 16) and Bhaskarrao Patil (PW 19). They gave evidence on the conduct of accused No. 1. Their evidence shows that accused no. 1 was Administrator of Dhule Tahsil Dudh Sangh in 1991. Their evidence shows that on 6.10.1991 accused No. 1 made an attempt to cover up the things by unloading 50 cans at this milk center. Wagh (PW 16) has deposed that accused No. 1 himself had come with transport vehicle and had unloaded 50 cans at this Tahsil Dairy. PW 19, witness from this dairy has deposed that there was no demand of such cans, but behind his back accused No. 1 unloaded 50 cans on 6.10.1991 at Tahsil Dairy of Dhule. According to him, on these cans there was no marking to show that they were manufactured for Government Dairy. Bhaskarrao Patil (PW 19) had given such statement before Inquiry Committee also and that statement is also

admitted by him as Exh. 277.

61) Jaywant Gaikwad (PW 14) was working as Store Supervisor in Store Section of Dhule District Office at the relevant time. He has given evidence on the post held by the accused at the relevant time. Accused No. 5 was working as Senior Assistant in Stores. Accused No. 6 was working as Assistant Store Keeper. Accused No. 7 was working as Store Keeper. According to him, accused Nos. 5 to 7 were working under him. He has described the duties which were assigned to these accused and he has deposed that he knew their hand writing. According to him, entries in respect of cans involved in the matter were made in General Register and Can Register by these accused. He has deposed that accused No. 6 was writing General Register.

62) Gaikwad (PW 14) has given evidence that Store Keeper (accused No. 7) was given duty of delivery of cans as per the indent and he was also doing the duty of acceptance of cans as per the Chalan. According to him, there was separate register for cans called as Can Account Register which was maintained by accused No. 7. He has given evidence on routine internal inspection and verification which is normally done by the Regional Office, Nashik and he has given evidence on the verification of the things which is normally done by Finance Office of the State Government.



63) Gaikwad (PW 14) has deposed that it was his duty to check stock in Store Section regularly. He has deposed that he used to check General Register and Can Register also. He has deposed that accused No. 6 was assisting accused No. 7. According to him, accused No. 5 was to look after the correspondence of purchase including bills and accused No. 5 used to send the bills to Account Section.

64) Gaikwad (PW 14) has given evidence on various entries made in General Register and Can Register. General Register bears signatures of accused No. 3, accused No. 5 and accused No. 7. Various entries made in General Register in respect of cans received from the contractor from 20.3.1991 are proved in the evidence of Gaikwad. According to Gaikwad and the record, before 20.3.1991 there was no balance of cans in Can Account Register. Can Account Register bears signature of Kulkarni, accused No. 7. In respect of cans received on 10.6.1991 the entry in the Store General Register bears signature of accused Deore, accused Shinde and accused Kulkarni. The delivery Chalan in respect of these 300 cans bears signature of Kulkarni (these cans are in respect of Sakri Station). Deore had made entry in respect of these cans in General Register.

65) This Court is discussing relevant entries on which

Gaikwad has given evidence. As per his evidence and the General Register of Stores, on 11.6.1991, 300 cans were given to Sakri Station. This entry was made by accused No. 7 Kulkarni and there are signatures of accused Nos. 3 and 5 on this entry. Below the entry of 300 cans, on the same day one more entry was made by Kulkarni to show that 80 more cans were sent to Sakri. There were indents bearing Nos. 40617 and 40616 which are mentioned respectively for these two entries in General Register. It is already observed that the Chalan of only 300 cans was issued by the contractor as contractor had supplied only 300 cans to Sakri Station directly. Other cans were not in balance. No other Chalan of 80 cans was there and so, there was no question of making entry of 80 more cans in the General Register. Thus, for manipulation, at District office two indents were collected to show that there was demand of 380 cans, but actually 300 cans were supplied by contractors and they were sent to Sakri directly. Those entries are mainly in the hand writing of accused No. 7.

66) Gaikwad (PW 14) has given evidence that on 13.5.1991 entry of 200 cans was made in General Register of Stores as per the indent No. 41979 and the indent was of Dhule District Milk Dairy. This entry at Exh. 173 is also in the hand writing of Kulkarni, accused No. 7. It is already observed that in respect of 200 cans shown to be given to Dairy Section of Dhule District on 13.5.1991, there was no

corresponding entry in Can Account Register in Dairy Section (Exh. 56). Similarly, in General Store Register of Store Section, there is entry of 200 cans shown to be given under indent No. 42000 to the Dairy Section of Dhule District on 24.6.1991. There is no corresponding entry in Can Account Register of Dairy Section of Dhule District at Exh. 57. The entry dated 24.6.1991 in General Register is in the hand writing of accused No. 7 Kulkarni. This evidence shows that in Store Section record was created of delivery of more cans, but such cans were actually not received. By manipulation of record and to cover up the things, entries were made in Stores Department to show that such cans were issued either to Dhule District Dairy or Sakri Station.

67) Gaikwad (PW 14) has given evidence that after comparing the record and after physical verification, they found that when there ought to have been 2230 cans in balance in Dhule Stores, 1830 cans were in balance and 400 cans were missing as per the record. This difference in figure show as to how the false entries were made in respect of indents to show that 400 cans were given to Dhule District Dairy.

68) Gaikwad (PW 14) has given evidence that he had gone to Sakri Station with Inquiry Committee. He has deposed that after verification they found that 163 cans were short at Sakri. For Sakri

also false record of indent was prepared by accused No. 4. Gaikwad has given evidence that during Sakri visit, they found that 100 cans were unloaded at Sakri after starting of the inquiry. The incident of such unloading of the cans and modus operandi of accused Nos. 1 and 2 in that regard is already mentioned. The record proved in the evidence of Gaikwad viz. Exhs. 147 to 197 is consistent with the oral evidence of Gaikwad. His evidence remained unshaken in the extensive cross examination. The Trial Court has believed this witness also.

69) Suresh Vaidya (PW 18), the Accounts Officer of District Dairy Office Dhule is examined to prove the payments which were made to the contractor in respect of cans shown to be received on record. His evidence shows that claims are required to be made by the concerned department to Account Section and it passes the bills and the bills are then sent to treasury for payment. Liladhar Patil (PW 20) was also Accounts Officer, but from 10.6.1992.

70) Vaidya (PW 18) has given evidence on the procedure which is followed when cans are received by Stores Department. His evidence shows that the contractor submits the Chalan to Store Section and Store Section prepares bill. In his evidence, the record like registers, entries showing that payments were made to the contractor in respect of total cans shown to be supplied to Dairy is

proved. The entries are at Exhs. 266 to 275. Vaidya had given statement before the Inquiry Committee and he has admitted these statements at Exhs. 66 and 106. His evidence shows that even when grants for particular purpose like purchase of cans are not made available in the yearly allocation, the General Manager can given undertaking for making available such grants and then the bill can be passed. His evidence shows that in this case as per the oral instruction of accused No. 1 who was General Manager, the bills were paid. In the evidence of Liladhar Patil (PW 20) some entries of payment in respect of some cans are proved. Thus, the evidence of these two witnesses shows that when payments were made in respect of more than 500 cans, such cans were actually not supplied.

71) The evidence of Salunke (PW 22), the Investigating Officer and the other evidence already discussed shows that some sample cans were seized for testing quality. The report of Forensic Science Lab Bombay at Exh. 281 shows that the cans partly confirm to IS-1373 of 1967 (II Revision) specifications. They were in respect of capacity, height, diameter and thickness. They, however, did not confirm to specifications in respect of composite joints of the bottom, height of shoulder band, sealing lug, size and shape of handles etc. The report shows that the cans differed grossly in respect of design and heights. It is already mentioned that cans were of no use as they are having leakages.

72) Two Investigating Officers like Shri. Madhukar Pawar (PW 21) and Shri. Salunke (PW 22) are examined to prove that police made verification of cans and they took step for examination of quality of cans. The relevant panchanamas and expert report are already mentioned. The evidence of Investigating Officers show that specimen hand writing and specimen signatures of accused persons were collected in the presence of panch witnesses and this record was sent with the disputed record like indents already mentioned for comparison to hand writing expert. The evidence of Pawar (PW 21) shows that in English and Marathi specimen hand writing and signatures of accused No. 2 were obtained. That record is at Exhs. 230 to 243. In the evidence of Salunke (PW 22) similar record in respect of accused No. 2 is proved which is at Exhs. 219 to 222. Such record in respect of accused Vasant is at Exhs. 253 to 260 and in respect of Dilip Dhande is at Exhs. 246 to 249.

73) The hand writing expert Shri. Pandit (PW 17) is examined to prove the opinion formed by him after comparison. The opinion given by him is duly proved at Exh. 262. The evidence of this witness is mainly in respect of tampering done on the indents. The hand writing of the witness who had prepared the indent and hand writing of accused No. 2 who had added new entries were sent. The opinion shows that the new entries were made by accused No. 2. Accused

No. 2 had signed also on the indents to show that he had collected the cans. Further, there is also direct evidence of witnesses which is already discussed to show that the indents were prepared by other staff and the subsequent entries were made by accused No. 2. Thus, the opinion of the hand writing expert is consistent with the evidence of other witnesses.

74) Lastly there is the evidence of extra judicial confession of some accused including accused No. 2. In the statement at Exh. 76, accused No. 7 had blamed accused No. 2 in respect of two indents under which 200 cans each were shown to be supplied to Dairy Section by Store Section. Accused No. 7 had stated in his statement that cans were supplied to accused No. 2 and he had signed on indent in token of having received the cans. The statements show that the entry in indent dated 13.5.1991 of 200 cans were made subsequently by accused No. 2.

75) Kulkarni (accused No. 7) blamed Pawar (accused No. 4) in respect of indent of Sakri Chilling Center. He stated before the Committee that accused No. 4 had changed the original figure 300 to make it 380 when he had made record of only 300 cans. In respect of indent No. 40616 and 40617 Kulkarni did not explain anything and he did not offer explanation in respect of shortage of cans.

76) In the statement at Exh. 77 of accused No. 1, he did not explain as to why demand of cans was registered for the year 1990-91 when there was no such collection of milk during that period. However, he mentioned in the statement that in January 1991 he had again written that there was need of hardly 100 cans. He admitted in the statement that in respect of this subsequent communication no steps were taken to reduce the demand and order of 5700 new cans was given by the Higher Office. He admitted in the statement that there was no budgetary provision, but he had made payment of Rs.23 lakh to the contractor immediately by giving some undertaking to treasury. Accused No. 1 further admitted that during physical verification made by Inquiry Committee, it was noticed that there was shortage of 530 new cans. Accused No. 1 blamed the officer of Store Department for such lapse. In the statement he stated that he did not physically verify the cans before giving direction of making payment. He blamed accused No. 2 for manipulation in indent and stated that he would take appropriate departmental action against accused No. 2. In the statement he had admitted that as per the demand of Sakri only 300 cans were sent to Sakri and not 380 cans. It is already observed that in Stores Department entries were made to show that 380 cans were supplied to Sakri Station. In the statement at Exh. 108, accused No. 1 blamed Superior Officers also. He blamed them both for making demand of 5700 cans and for making payment when there was no budgetary



provision. He contended that he made complaint about inferior quality of the cans also. In the statement, he gave probability that in each delivery less cans were supplied by the contractor than shown in the Chalan. He stated in the statement that subsequently, some cans were sent by the contractors and that information was given to him by Additional Commissioner. He admitted that as per his instructions, after starting of the inquiry 100 cans were unloaded at Sakri and 50 cans were unloaded at Dhule Tahsil Dairy.

77) In the statement at Exh. 78 accused No. 2 Ambdekar admitted everything like corruption, manipulation in the record made by him etc. He gave excuse that such things are done in routine manner and persons like him are bound to obey the orders of superior like accused No. 1. He admitted specifically following things :-

(a) The demands of new cans in indent was written by him due to pressure of accused No. 1. He contended that contractor had given message of Additional Commissioner to make such correction in demands for the Dairy Section. He gave the manner in which the addition, manipulation was made by him and he has stated that as per the suggestion given to him by accused No. 7 Kulkarni he made these entries in indent. He admitted his signature appearing on both the indents of Dhule District Dairy

Section. He stated in the statement that no other person from Dairy Section knew about the manipulation and the manipulation was done to adjust the figure to match the figure of supply of cans by contractors.

(b) Accused No. 2 admitted that he had made addition of demand of cans in the two indents subsequently. He stated that as there were directions of accused No. 1 and store persons were acting as per instructions of accused No.1, these things could be done by him.

(c) Accused No. 2 contended in the statement that it was represented to him by accused No. 1 and the contractor that such adjustment was being done as per the instruction of Additional Commissioner Shri. Kotnis. Accused No. 2 stated in the statement that he wanted his transfer to Mumbai Office from Dhule Office and he felt that Shri. Kotnis will help him for transfer and so, he did the manipulation. He stated in the statement that it was his first lapse and for that he was repenting.

(d) Accused No. 2 stated that he did not want to make money by doing such manipulation. He stated that accused no. 5 Shinde offered him Rs.20 per can for making such adjustment and he took the amount offered to him. He stated that similarly accused No. 7 Kulkarni, accused No. 5

Shinde, accused No. 3 Kasliwal, accused No. 1 Ghatmale and Additional Commissioner Kotnis must have made money due to manipulation of such record. He stated in the statement that due to difficulties faced by him to pull on due to the rise in the prices of essential commodities and as there was no alternative before him, due to the manner in which the systems are working he did the manipulation. He stated that he showed willingness to the Committee to act as a witness and become approver if the department wanted to take action.

78) Accused No. 5 Shinde blamed accused No. 3 for the entries made in General Register and Can Register of Store Section on 13.5.1991. His signature is appearing on page No. 25 of Store Can Account Register and he stated that by mistake he made signature on this entry. He again stated in the statement that to show that actual balance of cans in Store Section was the same as per the record, he signed on the register. In the statement he admitted that such cans were not found in Dairy Section of Dhule when physical verification was made by the Committee.

79) Accused No. 3 Kasliwal in his statement at Exh. 110 has admitted that at the relevant time, he was Stores Officers, the Head of Store Section of the District. However, he has denied that he was

involved in the mischief alleged. He has tried to say that he had no knowledge about the two entries of supply of 200 cans each to Dairy Section of Dhule. He has, however, not explained about the shortage of cans noticed during inquiry and existence of such entries in the record of store section.

80) In the evidence, the record of sanction given to prosecute accused Nos. 1 to 3 is proved by the prosecution and there is no challenge to this record and so, this record is not discussed in detail.

81) The aforesaid discussion of evidence which includes the statements of accused which can be used under section 30 of the Evidence Act shows that cans less in number than shown in Chalan were supplied by the contractor. The Trial Court came to the conclusion that at Dhule District Dairy Section 400 cans were less than the record and at Sakri 160 cans were less than the record. The accused have admitted that such difference was found. Further, there is the record of manipulation done by accused to cover up the mischief. The manipulation was in respect of Dhule District Dairy and also Sakri Chilling Plant. Accused No. 2 has specifically admitted the manipulation and the purpose behind the manipulation. Though accused No. 3 has denied that the knowledge about the manipulation, the entire Store Section was working under him and

the record of Store bears his signature and so, it cannot be said that he had no knowledge of manipulation. The evidence of confessional statement of accused No. 2 can be used against him and also against accused Nos. 1 and 3 under section 30 of the Evidence Act. Extra judicial confession of accused No. 2 can be used even if it is presumed that it was retracted though it was not retracted. There is voluminous oral and documentary evidence to prove the offence against accused No. 2. The defence that accused No. 2 made such manipulation only under pressure or that he gave confessional statement under pressure is not believable in view of the aforesaid record. For using the statement of accused no. 2 as against him and others, this Court is placing reliance on the observations made by the Apex Court in the cases reported as Piara Singh and Ors. Vs. State of Punjab (AIR 1977 SC 2274) and State of U.P. Vs. M.K. Anthony (AIR 1985 SC 48).

82) The provision of section 30 of the Evidence Act runs as under :-

**“30. Consideration of proved confession affecting person making it and others jointly under trial for same offence.-**

When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of uch persons is

proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

*Explanation.*-"Offence" as used in this section, includes the abetment of, or attempt to commit, the offence.

In the case reported as **Haricharan Kurmi Vs. State of Bihar, AIR 1964 SC 1184 (V 51 C 149)** and **Baburao Bajirao Patil Vs. State of Maharashtra 1971 (3) SCC 432**, the Apex Court has laid down that when the Court is inclined to accept the other evidence and the confession of co-accused lends assurance to the inference available from other evidence, the confession of co-accused can be considered by the Court. In the case of **Baburao** cited supra, it is further laid down that retracted confession can be taken into account in arriving at such conclusion. In the present matter, accused No. 2 admitted his guilt in fullest extent in the extra judicial confession and thereby he exposed himself to penalty provided for the offence. So, there is guarantee for the truth in it. The nature of offence of accused No. 2 show that it was voluntary and he was probably expecting to become witness. Such expectation does not make it statement made under pressure. For this reason also, this Court holds that the confessional statement can be used against accused Nos. 1 and 3 also.

83) In the Trial Court, accused Nos. 1, 3 to 8 defended the matter together. They blamed accused No. 2 for manipulation in indents, particularly Exhs. 62 and 63. It is already observed that there was corresponding manipulation in General Register and Can Register of Store Section of District Office. Due to all these circumstances, it cannot be said that accused No. 3 did not know anything about it. There is evidence against accused No. 1 of various nature. He had registered the demand of 6600 cans when there was no need of any cans. There is the evidence that less number of cans were supplied than shown in the Chalan, but the payment was made to contractor by creating false record of receipt of more cans. If the cans shown in Chalan were not supplied, the Store Section could have easily noticed short supply and Store Section would not have prepared bill for payment. Evidence is there though in the form of statement of co-accused that due to insistence of accused No. 1 manipulation was done. When there was period of 30 days for making payment, the payment was made immediately and that too when there was no budgetary provision. This was done and could have been done only at the instance of accused No. 1. Thus, the evidence on the record is more than sufficient to prove the offence of forgery and cheating as against accused Nos. 1, 2 and 3. The Trial Court had convicted these three accused persons. The First Appellate Court, Sessions Court has acquitted accused No. 3 Store Officer. As

the offence could not have been committed without connivance of accused No. 3 and as there is evidence of nature already discussed, this Court holds that the Sessions Court has committed error in acquitting accused No. 3. This Court holds that accused Nos. 1 to 3 are liable for conviction for offences punishable under sections 417, 465 r/w. 34 of I.P.C.

84) The evidence already discussed shows that there is clear probability that other accused acted as per the instruction of Superior Officers like accused Nos. 1 and 3. There is probability that they had no idea of object behind such manipulation. This Court holds that the view taken by the Trial Court in their favour is a possible view. This Court is not going in to the merits of the case that the offence of criminal misappropriation of Government money and cheating for that purpose was also committed and the conviction could have been given for both the offences. The ingredients of offence of forgery and cheating punishable under sections 465 and 417 are made out and that is a possible view.

85) Reliance was placed by the learned counsel for accused on observations made by the Apex Court in following cases :-

**(i) Chowdikodlu Asuralli Dyavappa Vs. State of Mysore (AIR 1979 SC 1533)**

**(ii) Dhan Kumar Vs. Municipal Corporation of Delhi (AIR 1979 SC 1782)**



**(iii) Ramji Surjya and Anr. Vs. State of Maharashtra (1983 AIR 810)**

**(iv) Criminal Appeal no. 1067/2008 (Pankaj Kumar Vs. State of Maharashtra & Ors.) decided on 11.7.2008 by Supreme Court of India.**

This Court has considered the ratio laid down in all the aforesaid cases and the ratio is applied.

86) In view of the aforesaid discussion, this Court holds that Criminal Appeal filed against the decision of Sessions Court, Dhule given in Criminal Appeal No. 17/2001 needs to be allowed as against accused No. 3 Jaylal Ganeshlal Kasliwal. Accused Nos. 1 and 2 are convicted only for the offences punishable under sections 417 and 465 r/w. 34 of I.P.C. They are sentenced to suffer imprisonment for one year and to pay fine of Rs.5,000/- each. So, similar order can be made against accused No. 3, who is acquitted by the Sessions Court. So, conviction given to accused No. 3 by the Trial Court can be restored to the extent of offence punishable under section 417, 465 and 34 of I.P.C. But, the sentence given by the Sessions Court to accused Nos. 1 and 2 needs to be made applicable to accused No. 3.

87) It can be said that Criminal Appeal No. 56/2009 of the State is filed out of misconception that accused No. 2 is acquitted by the Sessions Court. For the reasons already given Criminal Revision

No. 145/2008 of accused No. 2 Mandal Ambdekar needs to be dismissed. Other Criminal Revision No. 146/2008 of accused No. 1 Prabhakar Ghatmale also needs to be dismissed. In the result, following order :-

**ORDER**

I. Criminal Appeal No. 55/2009 filed against the decision given by Sessions Court in Criminal Appeal No. 17/2001 in favour of accused No. 3 Jaylal Kasliwal is allowed. The decision of acquittal of accused No. 3 given by the Sessions Court is set aside. Accused No. 3 stands convicted for the offences punishable under sections 465, 417 r/w. 34 of I.P.C. Criminal Appeal No. 55/2009 filed as against accused No. 1 - Prabhakar Ghatmale stands dismissed. Criminal Appeal No. 56/2009 stands disposed of. Criminal Revision Application Nos. 145/2008 and 146/2008 stand dismissed. Criminal Appeal No. 430/2001 filed against the decision of Trial Court in R.C.C. No. 92/1996 acquitting accused Nos. 4 to 7 is dismissed. Other proceeding, if any, stand disposed of.

II. Accused No. 1 - Prabhakar Karbhari Ghatmale, Accused No. 2 Mandal Ashok Ambdekar and accused No. 3 - Jailal Ganeshlal Kasliwal stands convicted for the offences punishable under sections 465, 417 r/w. 34 of I.P.C. For the offence punishable under section 465 r/w. 34 each of

accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5000/- (Rupees five thousand) by each of them. In default of payment of fine, they have to undergo S.I. for six months as per the decision of the Trial Court. For the offence punishable under section 417 r/w. 34 of I.P.C. each of accused Nos. 1 to 3 is sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/- by each of them. In default of payment of fine, each of them is to undergo S.I. for three months.

III. The substantive sentence given to each accused Nos. 1 to 3 to run concurrently.

IV. Accused Nos. 1 to 3 to surrender to the bail bonds for undergoing the sentence.

V. They are entitled to set off in respect of the period for which they have been behind bars.

VI. Registry to provide copy of this judgment free of cost to accused.

**[ M.G. SEWLIKAR, J.]**

**[ T.V. NALAWADE, J.]**

After declaring of the decision of the matter, the learned counsels for accused Nos. 1 to 3 requested for stay to the execution of sentence in view of the present peculiar circumstances like virus pandemic and the circumstance that regular courts are not working

and these accused may face difficulty in preparing and filing appeals against this decision in Supreme Court. Only due to the aforesaid circumstances, this Court is giving stay to the execution of the sentence on continuation of previous bail bonds for the period of 60 days. After completion of 60 days from today, steps are to be taken for execution of sentence by the Trial Court by issuing necessary warrant.

**[ M.G. SEWLIKAR, J.]**

**[ T.V. NALAWADE, J.]**

ssc/