IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 900 of 2010

With
R/CRIMINAL APPEAL NO. 617 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
BHARATBHAI MAGANBHAI THAKKAR & ANR.

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Appearance:
MR LB DABHI, APP for the Appellant(s) No. 1
MR JIGAR I SALVI(13796) for the Opponent(s)/Respondent(s) No. 1
RULE SERVED for the Opponent(s)/Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 10/09/2025

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE P. M. RAVAL)

1. Criminal Appeal No.617 of 2010 is preferred by the appellant – original accused Bharatbhai Maganbhai Thakkar under the provisions of Section 374 of the Code of

Criminal Procedure 1973 being aggrieved and dissatisfied with the judgment and order of conviction and sentence dated 7.4.2010 passed in Special Case No.5 of 2001 by the learned Special Judge, Fast Track Court, Vadodara convicting the appellant for the offence punishable under sections 420 read with 120-B or in the alternative 114 of IPC and ordered to undergo 3 years rigorous imprisonment and to pay fine of Rs.5000/-, in default, to undergo 3 months rigorous imprisonment and also convicted the appellant for the offence under sections 465, 467, 471 read with 120-B or in the alternative 114 of IPC and ordered to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one month rigorous imprisonment and also convicted the appellant for the offence under section 42(1) of the State Financial Corporation Act 1951 and ordered to undergo one year rigorous imprisonment and to pay a fine of Rs.2000/-, in default, to undergo one month rigorous imprisonment. Whereas, Criminal Appeal No.900 of 2010 is preferred by the State for enhancement of sentence.

2. It is required to be noted that the present appellant is original accused No.1, whereas original accused No.2 – Dhirendra Yogendrarai Vora who is respondent No.2 in Criminal Appeal No.900 of 2010 had also preferred the appeal against his conviction bearing Criminal Appeal No.581 of 2010. However, pending the appeal, original accused No.2 has passed away on 9.12.2011 and vide order dated 18.12.2012, the said appeal stood abated.

3. Criminal Appeal No.900 of 2010 is filed by the State for enhancement survives only against the present appellant – Bharatbhai Maganbhai Thakkar.

4. The facts shorn of unnecessary details are as follows :

4.1 That Bharatbhai Maganbhai Thakkar in connivance with four other persons entered into partnership firm in the name and style of Vijaya Packers who indulged

into manufacturing of plastic containers. The said firm applied to avail loan of Rs.21 lacs with the Gujarat State Financial Corporation (for short "GSFC"). Subsequently, the GSFC sanctioned and disbursed a sum of Rs.16,66,000/-. It is the case of the prosecution that loan amount came to be sanctioned and disbursed to the firm on the basis of transport receipts and purchase receipts and the certificate issued by the Chartered Accountant. However, during the scrutiny of the so called premises of Vijaya Packers, the GSFC came to know that the bills and other documents so submitted were forged and that no such partnership was existing at the time of preferring an application for sanctioning of the loan as stated hereinabove. It is in this pretext that the complaint came to be filed by the Manager of the GSFC before the Court for making and presenting false and forged documents in order to avail loan from the GSFC despite of having knowledge that no such plants and machinery were purchased.

4.2 That chargesheet came to be submitted and the

same came to be registered as Special Case No.5 of 2005.

4.3 Learned Sessions Judge vide Exh.18 framed the charge and recorded the plea of original accused Nos.1 and 2 vide Exhs.19 and 20 respectively to which they denied the charges and prayed for trial.

4.4 To bring home the charges against the appellant accused, the prosecution relied upon the following oral as well as documentary evidences.

ORAL EVIDENCES :

Sr.No.	Name	Exh.
1	Somsinh Vikabhai Hathila (Complainant)	81
2	Amit Ajitbhai Chavda (panch witness)	148
3	Zulfikar Ahmed Abrar Ahmed Shaikh (panch witness)	150
4	Ramanbhai Chandubhai Talpada (witness – Jr.Inspector, GSFC)	151
5	Govindlal Maneklal Bhatt (witness – Manager, GSFC)	152
6	Shrikant Marutirao Londhe (witness)	179
7	Manoj Dinkarrao Fansekar (witness)	180
8	Ranchhodbhai Manilal Patel (Investigating Officer)	183
9	Dhananjay Avinash Chaudhary (Investigating Officer)	184
10	Kitikumar Jethlal Trivedi (witness – Jr.Inspector,	196

	GSFC)	
11	Dineshchandra Hirachand Jain (witness Chartered Accountant)	197

DOCUMENTARY EVIDENCES :

Sr.No.	Name	Exh.
1	Complaint	82
2	Application for loan of M/s Vijaya Packers	84
3	Inquiry done by the officer of GSFC	85
4	Bills for purchase of machines	86
5	Receipts for transport	87
6	Payment Order Forms A/C No.C/V/766	88
7	Inspection Report dated 21.7.1994	89
8	Certificate dated 25.7.2994 of CA	90
9	Valuation certificate issued by Mahesh Parikh & Co.	91
10	Inspection verification report dated 25.6.1994 and certificate dated 25.6.1994 of CA	92
11	Inspection report dated 8.6.1994	93
12	Certificate of CA dated 8.6.1994	94
13	Letter dated 6.6.1994 of Punjab National Bank, Marve Road	95
14	Inspection report dated 28.5.1994.	96
15	Certificate of CA dated 28.5.1994	97
16	Valuation certificate dated 26.5.1994 given by Mahesh Parikh & Co for plot No.546	98
17	Letter dated 23.5.1994 of Webflax machinery suppliers and delivery plan.	99
18	Inspection report dated 22.4.1994	100
19	Letter of Punjab National Bank of current account	101
20	Certificate of CA dated 28.5.1994	102
21	Letter dated 24.1.1994 sanctioning the loan	103
22	Appraisal report dated 21.4.1994	104

23	Reply dated 9.6.1996 of Dinesh Jain, CA	105
24	Reply dated 7.6.1996 of Bharatbhai Maganbhai Thakkar	106
25	Panchnama of the visit dated 31.5.1996 and reply of Panch No.1.	107
26	Appointment order of complainant Hathila	109
27	Transfer order of complainant Hathila	110
28	Office / work order of complainant Hathila	111
29	Resolution of the board authorizing the complainant	112
30	Letter of Corporation for filing the complaint	113
31	Sanction letter of the Government of Gujarat (Home Department)	114
32	Partnership deed	115
33	Loan agreement	116
34	Hypothecation deed	117
35	General Power of Attorney	118
36	Declaration	119
37	Joint and Several Personal Guarantee	120
38	Affidavit – Bharat M.Thakkar	121
39	Affidavit – Manohar Dinkar Fanse	122
40	Affidavit Shrikant M.Londhe	123
41	Affidavit – Smt Jyotsna S.Londhe	124
42	Specimen signature of Bharat Magan Thakkar	125
43	Money receipts for loan amount	126 to 135
44	Order of Corporation for internal inquiry	136
45	Letter of Punjab National Bank for Inquiry Officer	137
46	Resignation letter of D.Y.Vora	138
47	Dismissal order of K.J.Trivedi	139
48	Circular of Corporation for loan advance	140
49	Valuation report of R.M.Sheth	141
50	Sale letter of Corporation for primary property	142
51	Report of Regional Manager	143

52	Affidavit – Smt Vijaya D.Fansekar	144
53	Panchnama	149
54	Order for assigning inquiry	185
55	Order for taking over the inquiry written by DySP	186
56	Circular for proceedings	189

4.5 The accused have examined two witnesses claiming their innocence. After recording of the evidence, further statement of the accused under the provisions of section 313 of CrPC came to be recorded and after hearing learned advocates for both the sides and considering the written arguments, passed the impugned judgment and order under challenge which is assailed before this Court both by original accused No.1 against conviction and by the State for enhancement of sentence.

5. Learned advocate Mr.Pratik Barot appearing for the appellant – original accused No.1 would contend that :

(a) That the complaint came to be lodged by one Somsinh Vikabhai Hathila against nine persons which includes all the partners of the partnership firm Vijaya

Packers of which the present appellant was also partner. However, when the chargesheet came to be filed, the same was against only two persons and there is no explanation afforded by the prosecution as to why the other persons who are initially named as accused were not chargesheeted and tried.

(b) That none of the documents alleged to have been forged were sent by the prosecution to the FSL for the purpose of examination nor any handwriting expert was examined to prove that signatures of the partners on the alleged partnership deed and other documents including loan agreement are forged. Thus, the prosecution has failed to prove forgery at its foundation.

(c) That entire conviction is based on the statement of the appellant accused recorded by the officer of the GSFC which was prepared for the purpose of internal inquiry. However, the Manager Mr.G.M.Bhatt who was examined as PW 5 who had prepared the said inquiry report has

accepted in his deposition that the statement of the appellant accused is made up.

(d) That on perusal of the report submitted by the Regional Manager, it clearly reveals that as per his verification, the partners of Vijaya Packers were engaged in trading business of packing material since last 5 – 6 years.

(e) That even at the time of examining the documents while sanctioning the loan by the GSFC to the appellant firm, details of plants and machinery were taken by the GSFC which included the companies from which machines were purchased by the appellant and were installed at Plot No.546. However, the prosecution has not called or summoned any witness from whom such machines were purchased to prove that bills of purchases were fake and forged alleged to have been got up by the appellant.

(f) Defence has examined two witnesses i.e. Kirtikumar J.Trivedi who served as the Junior Inspector at

GSFC as DW 1 who has deposed to the effect that at the time of inspection of the site of the appellant firm, there were different machineries lying at plot No.546 at Waghodia GIDC and the same was incorporated in the inspection report prepared by him. DW 2 – Dinesh C.Jain was also examined by the defence who is Chartered Accountant and had prepared the certificate. This witness on oath states that CA certificate was issued by him after verification of all the documents.

(g) That learned trial Judge ordered initiation of the proceedings under section 319 of the CrPC against both the defence witnesses who alleged to have played active role in commission of the offences. However, the said order came to be challenged by these witnesses before this Court by way of Special Criminal Application No.693 of 2010 and vide order dated 18.12.2015, the said order of the learned trial Judge came to be quashed and set aside.

(h) That the GSFC has taken over possession of plant

and machinery at plot No.546 at Waghodia GIDC under the provisions of section 29 of the State Financial Act on 30.10.1995 and an advertisement for sell of the assets was also issued on 20.12.1996. On perusal of the said advertisement, even that auction included the said machineries.

(i) That before taking possession, PW No.5 – Mr.G.M.Bhatt had also visited factory premises on 31.5.1996 and inquiry report is dated 12.6.1996 which also reflects all plants and machineries being installed at the premises. However, the GSFC has not produced the panchnama dated 30.10.1995 when the possession of land, building and machineries was taken over by them and has filed the complaint on 27.12.1996 after auctioning of the plants and machineries which is indicative of the fact that machineries were installed at the said plot which came to be auctioned and sold by the GSFC.

(j) Lastly, it is submitted that even in further

statement under section 313 of CrPC in the form of explanation afforded by the appellant herein wherein it is stated that he has also paid remaining amount of Rs.3 lacs and receipt of the same was also produced and despite being the appellant not charged for the offence of cheating under section 420 of IPC, however, at the time of passing the order of conviction, learned trial Judge has convicted the appellant under section 420 of IPC without there being any express charge framed against the appellant. Therefore, it is argued that in view of the aforesaid facts and circumstances of the case, the present appeal be allowed.

(k) In support of his submissions, Mr.Pratik Barot has relied upon the following judgments.

(i) (2023) 2 SCC 583 (Kalicharan Vs State of UP)

(ii) (2011) 8 SCC 300 (Rafiq Ahmed @ Rafi Vs State of UP)

(iii) (2023) 3 SCC 423 (Deepak Gaba and others

Vs State of UP)

(iv) AIR 2023 SC 3053 (Sukhbir Singh Badal Vs Balwant Singh Khera)

(v) (2009) 8 SCC 751 (Mohammed Ibrahim Vs State of Bihar)

(vi) (2018) 7 SCC 581 (Sheila Sebastian Vs R.Jawaraj)

6. Learned APP Mr. L.B.Dabhi would submit that :

(a) That the prosecution having proved its case beyond reasonable doubt, sentence awarded by the learned trial Judge is disproportionate against the offence committed by the original accused No.1.

(b) That learned trial Judge has failed to appreciate that all the accused persons in connivance with one another have forged the documents and after treating the same as genuine and thereby obtained the loan of Rs.16,66,000/- and in such circumstances, sentence awarded by the

learned trial Judge is lenient and deserves to be enhanced.

(c) That learned trial Judge has failed to appreciate the prosecution has examined nine witnesses and has produced and relied upon 56 documentary evidences and on perusal of the evidence of the complainant – Somsinh Hathila read with other documents, it is crystal clear that all the persons with abetment to one another have produced false documents with an intention to commit the offence of cheating with the GSFC and thus, looking to the oral as well as documentary evidences, when the prosecution has proved its case beyond reasonable doubt, learned trial Judge ought to have imposed maximum punishment.

(d) That learned trial Judge has failed to appreciate that when the case of cheating against the GSFC is increasing day by day, learned trial Judge ought to have imposed maximum punishment to set an example in the society and having failed to do so, the present appeal requires enhancement at the hands of this Court.

(e) Thus, it is argued to allow the present appeal and reject the appeal filed by the original accused No.1 being Criminal Appeal No.617 of 2010.

7. Heard learned advocates for the respective parties. We have gone through the Record and Proceedings of the case as well as impugned judgment.

8. We have also perused the oral as well as documentary evidences led by the prosecution before the learned trial Court.

9. The appellant accused is convicted for the offences punishable under sections 420, 465, 467, 468, 471 read with section 120-B or in the alternative under section 114 of IPC and also under section 42(1) of the State Financial Act. In order to attract section 420 of IPC i.e. cheating and dishonestly inducing delivery of property, ingredients of section 415 of IPC have to be satisfied. A

person should be induced either fraudulently or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property. The second class act set forth in section 415 is intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived. Thus, condition precedent for invoking section 415 of IPC is fraudulently dishonesty or intentionally inducement and in absence of this element, it will not attract the offence of cheating.

10. Section 465 of IPC provides for punishment for forgery. Section 463 defines forgery as follows.

> "Section 463 : Forgery .- Whoever makes any false document or false electronic record or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to

enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

Section 467 reads as follows :

"Section 467 : Forgery of valuable security, will, etc.- Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of

either description for a term which may extend to ten years, and shall also be liable to fine."

Section 468 reads as follows :

"Section 468 – Forgery for purpose of cheating.- Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Section 471 reads as follows :

"Section 471 – Using as genuine a forged [document or electronic record. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be

punished in the same manner as if he had forged such document."

11. Section 471 of IPC is applicable where a person fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document. Therefore, condition precedent for offence under section 471 of IPC is forgery by making false document and thus, the prosecution has to prove that the document was forged in terms of and false under section 464 of IPC. Section 470 of IPC lays down that a document is forged if there is (i) fradulent or dishonest use of a document as genuine, and (ii) knowledge or reasonable belief on the part of a person using the document that it is a forged one. Thus, section 470 defines a forged document as a false document made by forgery. As per section 464 of IPC, a person is said to have made a false document; (i) if he has made or executed a document claiming to be someone else or authorized by someone else; (ii) if he has altered or tampered a document; or (iii) if he has obtained a document

by practising deception, or from a person not in control of his senses. Thus, on reading of the aforesaid provisions, it is clear that unless the document is false and forged in terms of sections 464 and 470 of IPC respectively, the requirement of section 471 of IPC would not be met. Therefore, as per section 463 of IPC whoever makes any false document with in intent to cause damage or injury to the public or to any person or to support any claim or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud may be committed, a person is said to have committed offence of forgery. A making false document defines under section 464 of IPC and therefore, for the offence of forgery, there must be making of false document with an intent to cause damage or injury to the public or to any person. Thus, condition precedent for the offence under sections 467 and 470 of IPC is forgery and in turn condition precedent is making false document. Therefore, question before this Court is whether the accused herein can be said to have made and executed false document in collusion with

other accused and thus if ingredients of cheating under section 415 are not found, it cannot be said that there was offence punishable under section 420 of IPC. Thus, the prosecution has to first prove that forgery is committed as provided under section 463 coupled with ingredients of section 464 of IPC are also to be satisfied. Therefore, unless and until ingredients of section 463 of IPC are satisfied, a person cannot be convicted under section 465 of IPC solely relying on the ingredients of section 464 of IPC as offence of forgery would remain incomplete.

12. The following details in the tabular form would be convenient for the sake of understanding the chronology of events.

Sr.No.	Date	Particulars
1	24.5.1992	Loan application for Rs.21 lacs was preferred before the Gujarat State Financial Corporation by (i) Bharatbhai Maganbhai Thakkar, (ii) Manohar, Manoharbhai D.Fansekar, (iii) Smt.Vijayaben D.Fansekar, (iv) Srikant Lodha and (v) Smt.Jyotsna M.Lodha.
2	24.1.1994	Loan to the tune of Rs.17,30,000/- came to be sanctioned.
3	11.5.1994	Bharatbhai Maganbhai Thakkar submitted partnership deed, power of attorney, loan agreement, hypothecation deed, declara8.6.2006tion, joint and personal guarantees, affidavit etc.

4	18.4.1994 28.5.1994 25.6.1994 26.7.1994	Certificate approving machine purchase and plot having been purchased issued by Dinesh Jain, Chartered Accountant and the same also being installed at the site.
5	March 1996	GSFC came to know about fraud being committed with them.
6	24.5.1994	Mr.G.M.Bhatt, Manager and Mr.V.M.Vaishnav, Deputy General Manager came to be appointed vide office order dated 24.5.1994 to conduct internal inquiry.
7	12.6.1994	The aforesaid officers submitted inquiry report inter alia stating that there exist no company in the name and style of Webflex and Delta Engineering at Mumbai who have supplied machines to M/s Vijya Packers nor any machines have been purchased from the aforesaid companies. CA certificate by Mr.Dinesh Jain and valuation certificate by valuer Mr.Parikh & Company were false as against the valuation of the properties / plant and machineries.
8	30.10.1995	Took possession of the property which were thereafter auctioned which fetched Rs.3,71,000/-.
9	31.5.1996	The Inquiry Officer visited the site and as per the said panchnama, machineries as shown while taking the loan were not found at the site. However, some different machineries of the sub-standard quality and lower price were found in condemned condition. The certificate dated 6.6.1993 of the Punbaj National Bank obtaining working capital was false and forged and the invoice and delivery chalan dated 23.5.1994 alleged to have been issued by Webflex were also found forged and false.
10	20.12.1996	Paper advertisement for auction by GSFC.
11	27.12.1996	Written complaint given to the CID Crime, Ahmedabad by Mr.Somsinh.
12	22.01.1997	Panchnama by Investigating Agency at site.

13. On analysis of the evidence of PW 1 – Somsinh Vikabhai Hathila who has been examined vide Exh.81 i.e. complainant, the factum of lodging the complaint while

working with Head Office at Ahmedabad in Legal and Recovery Department and was appointed and authorized vide order dated 4.10.1996 in such cases where false and forged documents were presented and loans were obtained from the GSFC is surfacing on record. On going through the examination-in-chief of this witness, he has lodged the complaint based on the internal inquiry report submitted by the Manager Mr.G.M.Bhatt and Deputy General Manager Mr.V.M.Vaishnav. In the cross examination, this witness has admitted that he has not inquired into the facts of the present case. However, based on the documents received by him in the file, he has lodged the complaint. He has denied suggestion that he has not verified the documents appended with the complaint. He has also admitted that he has lodged the complaint against nine persons. He has also admitted that after investigation, the police has not arrested seven persons out of nine accused persons. Thus, from the deposition of this witness, the factum of lodging the complaint based on internal inquiry report is proved. However, the contents of the documents as required by law

which were alleged to have been appended along with the complaint though have been exhibited, yet they are required to be proved in accordance with law by leading direct evidence.

14. On perusal of the deposition of PW 2 – Amit Ajitbhai Chavda who has deposed vide Exh.148 who is the panch of panchnama carried out on 22.1.1997 i.e. after one year and three months of taking possession by GSFC and is placed on record vide Exh.149. On going through the entire deposition of this witness including the cross examination, the contents of the panchnama after lodging of the complaint and during the investigation is proved and as per the said panchnama, there was one old moulding machine lying with cover. However, inside there was no machinery. There was one old stitching machine lying in scrapped condition. Some old plastic scrap were also lying. Some galvanized sheets were also lying and some scraps with factory in closed condition was found.

15. PW 3 – Zulfikar Ahmed Abrar Ahmed Shaikh has been examined who has deposed at Exh.150 who is panch of panchnama at Exh.107 which was prepared on 31.5.1996 by the internal inquiry committee consisting of Mr.G.M.Bhatt, Manager and Mr.V.M.Vaishnav, Deputy General Manager at the site. In the examination-in-chief, the witness has stated that just next to plot No.546 in Vaghodia GIDC where he used to run his factory, before 8 or 9 years, two officers came with regard to inquiry of loan and had opened shed No.546 where there was no machinery8.6.2006 at all. However, this witness has turned hostile and after cross examining by learned Public Prosecutor, the witness has admitted as to what he has stated in the statement before the internal inquiry committee as well as police. However, during his cross examination by the defence advocate, the witness has admitted that till date, the police has not met him and it is also true that he has not given any statement to the police. He has also admitted that it is true that officers of the GSFC had not informed regarding the factory next to his factory

because he was not knowing anything. Thus, from the deposition of this witness at the most what had been stated by this witness before the inquiry committee has come on record but cannot be termed as reliable witness as he is blowing hot and cold.

16. The prosecution has examined Ramanbhai Chandubhai Talpada as PW 4 at Exh.151 who is also signatory to the panchnama at Exh.107 carried out at plot No.546 at GIDC Vaghodia on 31.5.1996 by the internal inquiry committee. The police has also recorded his statement. However, in the cross examination, the witness has stated that what the police has written in the statement is not known to him and it is true that the police has not made him read the statement made by him.

17. Vide Exh.152, PW 5 – Govindlal Maneklal Bhatt has been examined who is one of the members of the internal inquiry committee and had submitted the inquiry report. On going through the deposition, more particularly,

examination-in-chief of this witness, he has stated that in 1996, he was working as Manager in the GSFC, Ahmedabad and the management had appointed him and Mr.Vaishnav by written order to inquiry about irregularities with regard to the loan sanctioned to M/s Vijaya Packers, Vadodara. After which, he along with Mr.Vaishnav and the then Regional Manager Mr.K.S.Rana and other officers had opened factory premises and had checked, but it was found that machineries for which the loan was sanctioned were not found in accordance with what was sanctioned and on inquiring in the neighbouring factory, i.e. Technicalo Rubber and Yogi Industries, he came to know that M/s Vijaya Packers has not functioned for a single day and during night hours, machineries were taken out and 8.6.2006 had also taken statement to that effect. Thereafter, on 7.6.1996 and 8.6.2006, they went to Mumbai and contacted the partners of M/s Vijya Packers and had also went to the residence where one person i.e. Fansekar and another Londe, both husband and wife met them and stated that since they are not partners of M/s Vijaya Packers, they are

not bound to give any statement. Thereafter, they contacted the main accused Bharatbhai Maganbhai Thakar and he came personally at the place and inquired with him in detail to which, he has admitted that other partners in the said firm have resined from the beginning and on inquiry with Mr.Bharatbhai Thakkar with regard to machineries, he has admitted that bills submitted by him were forged and were made by one Mr.Gelango who has now shifted to Dubai and thereafter Mr.Bharatbhai Thakkar had also informed that since the prices of machineries were very high, they got manufacturer from Satyam Engineering at Mumbai at lower price and that he also informed that letter submitted of working capital being sanctioned by the Punjab National Bank and the bank statements are not given by the Punjab National Bank but are forged. On asking him the question as to why machineries were not installed in the factory, he informed that such machineries were not installed by laying foundation but were installed by nut-bolt and on asking why such illegality was committed by him, the accused informed that there was some disputes going on between

the couple and case of divorce was also going on; he required money and as a last resort, he sold out machineries and also informed the details of the said sale of machineries i.e. moulding machine was sold to Umiya Plastic at Puna at Rs.3,31,000/-, Roto Graver machine to Tin Graver Company, Nasik for Rs.5,31,000/- and ceiling machine to DDS Enterprise, Mulund for Rs.40,000/- and machineries which were installed at the factory were purchased at very low price from Mumbai, Dhoraji and Kandivali from scrap market. He also admitted that signatures in the power of attorney of the partners are also forged and all the partners had resigned through resolution deed. When the statement of Bharatbhai Thakkar was recorded, total loan amount of Rs.16,66,000/- was outstanding and had defaulted in paying the said loan amount and had also promised to pay to the GSFC within one year. He was also asked whether during the inquiry, he had faced any difficulty from the officer of the Corporation to which, he denied and stated that he has no complain against any one. This witness has also stated that on

inquiry, it was found that Gujarat Transport Company, Masjid Bander, Mumbai is not in existence through which machines were alleged to have been transported and working capital alleged to have been taken from Punjab National Bank. It is also stated by him in his deposition that vide letter dated 9.9.1996, the questions with regard to M/s Vijaya Packers were asked to Punjab National Bank, Malad West Branch, Mumbai and the Senior Manager of the bank had orally informed that they have not given any working capital loan to M/s Vijaya Packers and the letter of Punjab National Bank and the statements are not bearing the signatures of their employees and report dated 12.6.1996 which is at Exh.85 is signed by him and Mr.Vaishnav. He also relied on Exh.86 with regard to the bill issued by the Webflex of machineries and Gujarat Roadways Transport receipt. He also relied on the statement recorded by him during the inquiry of the Chartered Accountant Mr.Dinesh Jain at Exh.105 and statement of Bharatbhai Thakkar i.e. present accused at Exh.106 (tentative exhibit). He also relied on Exh.107 panchnama carried out on 31.5.1996,

statement of Zulfikar Shaikh recorded while preparing panchnama was relied on by him as appended with Exh.107.

17.1 In the cross examination, only relevant part is to the effect that the police has not taken his statement. He has also admitted that after inspection of the site, the loan was approved and that he has not seen the complaint and only prepared preliminary inquiry report. That he has not inquired as to which officer had visited the site.

18. The prosecution has examined Shrikant Marutirao Londhe vide Exh.179 as PW 6. He has not supported the case of the prosecution despite being cross examined by learned Public Prosecutor. However, on showing him Exh.115 i.e. partnership deed, he has denied his signature. In the cross examination by the defence advocate, this witness has stated that it is not so happened that the police has called him and has taken his signature at any time.

19. Vide Exh.180, Manoj Dinkarrao Fansekar PW 7 has been examined. He has been declared hostile. On cross examination by learned Public Prosecutor, the witness has only admitted to the effect that on 1.3.2001, the officers of CID Crime had taken his statement. However, the contents of the statement are totally denied and he has not been cross examined by the defence advocate.

20. Vide Exh.183 PW 8 – Ranchhodbhai Manilal Patel has been examined. This police witness has registered the complaint at Exh.82 and had prepared the panchnama at Exh.149 on 22.1.1997. Nothing material shaking the veracity of this witness has come on record during the cross examination by the defence side.

21. Vide Exh.184 PW 9 Dhananjay Avinash Chaudhary has been examined by the prosecution who was working as Police Inspector, City CID Crime Branch, Zone Office, Vadodara and on studying the complaint, it reveals

that loan of Rs.16,66,000/- has been obtained by Bharatbhai Thakkar from GSFC based on forged documents and involvement of officers of the Corporation was also found and since the provisions of the Anti Corruption Act were also attracted and he was not authorized to investigate had reported the same to the District Judge, Vadodara for invoking the provisions of the Anti Corruption Act and to hand over investigation to the officer not below the rank of DySP. Thereafter, the Court ordered to investigate the offence through Mr.Chauhan, DySP. Thereafter, another order came to be passed by learned Court for investigating the offence by the officer of Police Inspector rank and as per the order passed by the Additional I.G., CID Crime, Gujarat investigation was handed over to him and on 4.1.2000, he took over investigation. Thereafter, detailed statements were recorded of the complainant – Somsing as well as Vigilance Officer Mr.Bhatt of the GSFC and other officers who were involved in the preliminary inquiry. On investigation, other co-accused Mr.Parikh had fled away to America and on inquiry, it was found that there are no chances in near

future of his return and therefore, his name was shown as absconded in column No.2 of the chargesheet and after obtaining relevant documents, however, such documents were frequently needed by the Corporation, such documents were handed over to them as required on condition that they will hand over back to the Investigating Officer as and when called for and such documents were handed over to the complainant – Somsing and on 21.7.2001 chargesheet was filed against two accused i.e. Bharatbhai Thakkar and Hirenbhai Vora on finding enough proof of crime having been committed by them. He has also relied on various documents which were appended along with the complaint.

21.1 In the cross examination, this witness has admitted that he has got verified the documents and has also verified personally. He has also admitted in the cross examination that when accused No.1 applied for loan, the Corporation had inquired all the aspects which includes site visit as well as checking of documents supplied by him. He has also admitted that in the original complaint, other

officers were also shown as co-accused along with Chartered Accountant. He has also admitted that those who were not found guilty have not been shown as accused in the present case. He has also admitted that he has taken the statements of officers of Punjab National Bank and are also shown as witnesses in the present case in the chargesheet. He has also admitted that officers of the Corporation had inquired at the factory site. He has also admitted that due to nonpayment of loan dues, the Corporation had undertaken the process of auction. He has also admitted that he has not sent documents for opinion to the handwriting expert. He has also admitted that there is no whisper with regard to bribery in his investigation. He has also admitted that he has no authority to investigate the case regarding corruption.

22. From the evidence on record, the facts which surface are as follows:

23. From Exh.81 i.e. deposition of Somsinh –

complainant and the complaint at Exh.82 which is dated 27.12.1996, it is clear that the present complainant has deposed based on the documentary evidence and has no personal knowledge about the crime committed.

24. As far as deposition of PW 2 - Amit Chavda at Exh.142 is concerned, he is signatory to Exh.149 panchnama carried out on 22.1.1997 after lodging of the complaint and after advertisement of auction dated 20.12.1996 at Exh.184. From the said panchnama, it cannot be said that documents were forged and that the present appellant was maker of such documents. At the best, machineries which were lying at the factory were not the same against which loan was sanctioned is surfacing on record which creates doubt against the present accused. However, how strong doubt may be it cannot replace standard of proof to be proved beyond reasonable doubt, more particularly, when the fact of machineries not purchased as per sanctioned loan and those machines were of some other company coupled with the fact of such

machineries being brought from other suppliers and being sold thereafter and replacing them by substandard machineries is not proved.

25. From the deposition of PW 3 at Exh.150 i.e. Zulfikar Shaikh and panch witness of panchnama at Exh.107 carried out by Mr.G.M.Bhatt i.e. PW 5 who has been examined at Exh.152 and had prepared the panchnama at Exh.107 on 31.5.1996 while carrying out preliminary inquiry. This witness after being declared hostile has supported the case of the prosecution. However, during his cross examination by the defence, he has stated that it is true that the police has not recorded his statement and that he has also not dictated the contents of the said panchnama since he was not aware about the status of the factory. Thus, deposition of this witness does not repose confidence.

26. PW 4 Ramanbhai Chandubhai Talpada is also signatory of the said panchnama at Exh.107 which has

been prepared by Mr.G.M.Bhatt while conducting preliminary inquiry. However, this witness does not disclose with regard to the contents of the said panchnama prepared during preliminary inquiry. Thus, from the deposition of this witness also, the factum of contents of the panchnama are not proved in accordance with law.

27. PW 5 Govindlal Maneklal Bhatt had prepared preliminary inquiry report along with one Mr.Vaishnav. From the deposition of this witness, what has been stated by him is with regard to the preliminary inquiry carried out by him and Mr.Vaishnav based on the statements recorded by them. However, entire case is based on such preliminary inquiry report wherein statement of the accused is also placed on record by way of tentative Exh.106. This witness has not given statement to the police. However, the Investigating Officer states otherwise. Thus, from the deposition of this witness what is proved that he had prepared Inquiry Report based on which the present complaint came to be filed.

28. From the deposition of Shrikant Marutirao Londhe at Exh.179, it appears that the witness has turned hostile. However, he has stated that signature in the partnership deed at Exh.115 is not his signature. However, this aspect also does not prove the factum of accused having signed the said partnership deed in the name of Shrikant Londhe coupled with the fact that the Investigating Officer in his cross examination at Exh.184 has admitted that he has not sent any document to handwriting expert for arriving at the conclusion.

29. PW 7 – Manoj Dinkarrao Fansekar is also declared hostile except for admitting the fact in his cross examination by learned Public Prosecutor that on 1.3.2001, CID Crime has taken his statement. The case of the prosecution does not get any support from the deposition of this witness.

30. From the deposition of PW 8 – Ranchhodbhai

Manilal Patel the factum of panchnama prepared on 22.1.1997 which is at Exh.149 is proved. However, for the reasons stated in paragraph 24, the said aspect is of no help to the prosecution. This police witness has not taken any statement of the complainant and has merely lodged the FIR at Exh.82.

31. From the deposition of PW 9 – Dhananjay Avinash Chaudhry i.e. Investigating Officer, it is clear that this witness has taken the statements of officers of Punjab National Bank from where the accused have alleged to have obtained working capital. However, no such witnesses have been examined in the present case. No expert opinion with regard to admitted signature of so called partner Shrikant Londhe has been taken by the Investigating Officer nor it has been sent to get it compared with the partnership deed at Exh.115 which is denied to have been signed by the said partner. The Investigating Officer has not investigated with regard to existence of the Webflex company and Gujarat Roadways through which machineries were alleged to have

been purchased by the accused.

32. Thus, it clearly transpires from the deposition of Mr.G.M.Bhatt i.e. PW 5 at Exh.152 read with deposition of PW 9 i.e. Investigating Officer at Exh.184 that the accused has been arraigned based on the report submitted by Mr.G.M.Bhatt and Mr.Vaishnav dated 12.6.1994 alleged to have been prepared by the committee constituted by the GSFC for preliminary inquiry into the allegations of fraud and forgery committed upon them. However, except recording the statements of the officers of the GSFC and panchas, no independent witness with regard to the allegations as levelled against the present accused of forging signature of partner despite partnership firm being dissolved, forged documents of Webflex despite no such firm having been existed, no investigation as to whether the said machineries were brought through Gujarat Roadways despite not in existence have been examined by the prosecution.

33. Despite the Investigating Officer having recorded the statements of officers of Punjab National Bank from where the accused had alleged to have taken working capital have not been examined for the reasons best known to the prosectuion. The investigation regarding forged documents of Punjab National Bank has not been carried out. Thus, it clearly transpires that only upon the preliminary inquiry carried out by Mr.G.M.Bhatt and Mr.Vaishnav, learned trial Court has come to the conclusion that the accused has committed forgery and has thus convicted the accused. It is required to be noted that to prove the factum of forgery, the prosecution ought to have proved by investigating and bringing on record that no such company i.e. Webflex existed, secondly, no transport company in the name of Gujarat Roadways existed and thirdly, the signatures of the alleged partnership deed were forged by the present appellant and documents purported to have been issued by Punjab National Bank were also forged.

34. That machineries alleged to have been purchased

at lower price from other firm than the Webflex ought to have been investigated coupled with the fact that none of the documents have been sent to the handwriting expert to prove the factum of false and fabricated signatures by the appellant and thus, factum of forgery is not proved beyond reasonable doubt.

35. We have also considered the judgments relied upon by learned advocate for the appellant. Though the are on diffirent set of facts however have considered the principles laid down in the said judgments. Thus, when the prosecution has failed to prove that by forging documents and signatures, the appellant having deceived the officers of GSFC and thus fraudulently and dishonestly obtained the loan and also having failed to prove that author of the so called forged document is the appellant or on his behest, they were prepared by Mr.Gelango, under the circumstances, conviction is not sustainable. As far as nonframing of charge under section 420 of IPC and still conviction being handed down the the appelalnt is

concerned, the said argument would become redundant and acedemic in view of the fact that the prosecution has failed to prove that the documents are forged by the appellant or at his behest.

36. It is required to be appreciated that the accused cannot be convicted on the sole basis of evidence collected during preliminary inquiry carried out by the officers of the GSFC. At the best such report could become foundational step to put criminal machinery into action. Criminal justice system operates in India on the strict rules and procedure and are designed as to protect the right of the accused and as such preliminary inquiry carried out by the officers of the GSFC does not meet with this standard for the reasons being that the inquiry report is a document that records the statements of the witnesses to arrive at a prima facie satisfaction that wrong has been committed with GSFC, more particularly when persons examined during inquiry are not present before the court of law to be thoroughly cross examined and thus, their statements are to be

considered as hearsay. It is also required to be noted that statement of the accused at Exh.106 cannot be basis of conviction since at the best, it can be said to be extra judicial confession which is a weak piece of evidence which requires corroboration and in the present case, no such corroborative piece of evidence is brought on record, more particularly, when the Investigating Officer has failed to carry out investigation so as to prove the case of the prosecution of forgery, more particularly, forged documents and signatures as alleged in the complaint based on the admission of the accused during preliminary inquiry carried out by the officers of the GSFC. In the case of ***Sahadevan v. State of T.N.***, reported in ***(2012) 6 SCC 403*** Hon'ble Supreme Court held that:

> "Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra- judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an

extra-judicial confession alleged to have been made by the accused.

The Principles

i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.

ii) It should be made voluntarily and should be truthful.

iii) It should inspire confidence.

iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.

v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.

vi) Such statement essentially has to be proved like any other fact and in accordance with law.

Tested on the afore-stated principles and on reading of the

entire deposition of Mr.G.M.Bhatt he has recorded the statement of present accused in the form of confession on 7.6.1996 (Exh. 106) however is not supported by a chain of cogent circumstances and is also not corroborated by other prosecution evidence. Under the circumstances it cannot be said that the prosecution has succeed in proving the charges against the present accused.

37. That deposition of PW 5 – Mr.G.M.Bhatt at Exh.152 is purely based on the preliminary inquiry report carried out by him along with Mr.Vaishnav that too on the admission made by the present accused. Thus, the evidence collected during preliminary inquiry may be sufficient to put the criminal machinery into motion but is not sufficient to prove criminal guilt. Thus, there is no direct evidence put forward by the prosecution to prove the offence of forgery and cheating by examining FSL expert, officers of Punjab National Bank, inquiring with regard to non-existing Webflex com and transporting such goods through non-existing transport company also with regard to

non-sending of admitted signature of so called partner who has been examined as PW 6 – Shrikant Londhe. Thus, in absence of testimony of handwriting expert who can give clear cut opinion on the signature or handwriting, in absence of proof from the manufacturer of machineries i.e. Webflex (if at all Webflex existed or not is not investigated in to) to prove that such purchases were never made by the accused and that documents of transportation by Gujarat Transport Company (if at all transport company existed or not is not investigated in to) and that of bank statements and letter of obtaining working capital from the Punjab National Bank were forged and false. The investigation with regard to forged documents having prepared at the behest of accused by one Mr.Ghelango who shifted to Dubai is not coming on record during investigation. Thus, the prosecution having failed to prove each and every element of crime through admissible evidence and by not presenting the witnesses to prove such forged documents and in absence of such witnesses who were not subjected to cross examination, it is difficult to come to the conclusion that the

appellant had committed the crime as alleged.

38. Thus, it is well settled law that how strong suspicion may be it cannot take place of proof and it is the duty cast upon the Court to ensure that suspicion cannot take place of legal proof. In the case in hand, learned trial Court seems to have carried away by the fact of accused having admitted before the Inquiry Officer and when the prosecution has failed to prove very foundation of forgery of documents or fraudulent transaction, personal liberty of a person can never be taken away based on the evidences collected during preliminary inquiry by officers of GSFC having evidentiary value of standard of preponderance of probabilities. Thus, there is poor and shabby investigation and the Investigating Officer having not remained vigilant in discharging his duty under such circumstances, the prosecution has failed to prove the offence of forgery by adducing cogent, reliable and admissible evidence. When the offences under the Indian Penal Code of false and forged documents and signature are not proved, offence under

section 42(1) of the Gujarat State Financial Corporation Act 1951 also cannot be sustained which attracts offence for willfully making any false statement whereby security is given to the financial corporation for any accommodation granted by it under the Act. Even otherwise, Section 42(3) of the said Act provides for cognizance by a Court on a written complaint. As provided under section 2(d) of the CrPC means any allegation made orally or in writing to the Magistrate with a view to his taking action under the Code that some person whether known or unknown has committed an offence but does not include the police report i.e. chargesheet. In the case on hand, cognizance has been taken by the Special Court based on the chargesheet submitted by the Investigating Officer and as such on such police report, which the Court has no jurisdiction to take cognizance of. Thus also, conviction under section 42(1) of the said Act is required to be set aside.

39. At this stage, it is required to be noted that admission before the Inquiry Officers of the GSFC cannot be

looked into for one more reason being that they would be directly interested in outcome of the criminal prosecution coupled with the fact that such admission being extra judicial confession is a weak piece of evidence and cannot be relied upon for convicting the present appellant without there being any other proven corroborative piece of evidence and chain of cogent circumstances. The tenor of the Inquiry report demonstrates that Mr. G.M. Bhatt had made up his mind to find the present appellant guilty, coupled with the fact that the investigating officer has proceeded to investigate on the basis that the offense was committed in such a manner that no evidence was left, else the lacunae as recorded herein above would not have remained in the investigation. Under the circumstances, appellant ensures acquittal. It is also highly surprising as to why only 2 out of 9 accused have been charge sheeted and tried. No reasons whatsoever is coming forth from the prosecution for not trying the 7 co-accused despite 9 names having given by the complainant.

40. Under the circumstances, Criminal Appeal No.617 of 2010 preferred by the appellant – original accused Bharatbhai Maganbhai Thakkar succeeds and the same is allowed. The impugned judgment and order of conviction dated 7.4.2010 passed in Special Case No.5 of 2001 by learned Special Judge, F.T.C. No.5, Vadodara is set aside. The accused be set at liberty if he is in jail and if not required in any other case.

In view of the above, Criminal Appeal No.900 of 2010 preferred by the State for enhancement of sentence stands dismissed. R & P be sent back forthwith.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

H.M. PATHAN

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: HABIBULLAKHAN MOHAMMADKHAN PATHAN(HC00167), GOV, at High Court of Gujarat on 10/09/2025 14:02:38