

IN THE COURT OF SHIVANK SINGH,
SPECIAL JUDICIAL MAGISTRATE (C.B.I.), 6th FLOOR, C.B.I. COURTS
COMPLEX
AT GHAZIABAD



CBI
VERSUS
TARUN UPPAL & ORS.

CNR No: UPGZ04-012246-2015

RC No: RC 120 2014 A 0011

Branch: CBI/ACB/GZB

Originally Under Sections: 120-B, 419, 420, 468, 471 of IPC, 1860, S. 13(2) r/w 13(1)(d) of Prevention of corruption Act, 1988 and Section 66 of Information of Technology Act, 2000.

Police Report Filed under Sections: 120-B, 201, 419, 420, 467, 468, 471 of IPC and Section 66-A of Information of Technology Act, 2000.

JUDGMENT

- a) *Serial No. of the case* : 01/2015
- b) *Date of commission of offence* : 13.12.2014
- c) *Counsels for parties* : Sh. Ripudaman Singh Tanwar, Ld. Asst. PP for CBI.
Sh. Satyendra Veer, Ld. Advocate for Tarun Uppal & Sanjeev.
Sh. Ajit Singh, Ld. Advocate for Shravan Yadav.
- d) *Name of the complainant* : Sh. Jeet Singh, the then Dy .SP, CBI, ACB, Ghaziabad.
- e) *Name of the accused* :
- Tarun Uppal @ Satish Kumar** , s/o Sh. Satish Kumar.
R/o Flat No. 1502, Krishna Tower, Indraprastha, Ratan Lal Nagar, Kanpur Nagar, U.P.
 - Shravan Yadav** s/o Sh. Ram Chandra Yadav
R/o Village Berikhera, Ghatampur, Kanpur Nagar, U.P.
 - Sanjeev Kumar** s/o Sh. Tejpal Singh
R/o Village Khandsal Kalan, Koural, Amroha, U.P.
- f) *Plea of the accused persons* : Accused pleaded not guilty and claimed trial.
- g) *Final order* : Accused Tarun Uppal stands convicted for the charges of 120B, 419, 420, 467, 468 and 471 of IPC. Accused Shravan Yadav stands convicted for the charges of 120B, 420 of IPC. Accused Sanjeev Kumar stands convicted for the charge of 120B IPC.
- h) *Date of such order* : 10/06.2022

Date of Institution of case : 12.03.2015

Date of pronouncing the judgment : 10/06/2022

BRIEF STATEMENT AND THE REASON FOR DECISION :

The Facts:

The case of the prosecution/ CBI in brief is that this case was registered in the CBI, ACB, Ghaziabad on 13.12.2014 on the basis of complaint of Shri Jeet Singh, the then Dy. SP,

CBI, ACB, Ghaziabad. An operation was carried out by CBI, ACB, Ghaziabad on 13.12.2014 at Ideal Institute of Technology, Govindpuram, Ghaziabad which was led by Sh. Jeet Singh, Dy. SP on the direction of Head of Branch, CBI, ACB, Ghaziabad to verify the information about impersonation in the IBPS examination dated 13.12.2014 for the recruitment of clerks in Nationalised Banks at Ideal Institute of Technology, Ghaziabad. It is stated that on 13.12.2014 examination was held in two sessions i.e. one morning session and the other afternoon session. It is stated that in morning session accused Naveen Tanwar was found to be impersonating at the place of candidate Amit Singh and accused Sawan Kumar was found to be impersonating at the place of Ajay Pal Singh and two mediators namely Hanumant Singh Gurjar and Sugreev Gurjar were arrested outside the venue of the said exam. Thereafter, it is stated that subsequently, in the afternoon session, accused Tarun Uppal was found to be impersonating at the place of candidate Shravan Yadav and mediator in this case was accused Sanjeev Kumar.

The present case pertains to the incident of afternoon session i.e. impersonation in the case of candidate/accused Shravan Yadav. It is stated that on 13.12.2014, after completion of operation a Memorandum was prepared at Ideal Institute of Technology, Ghaziabad incorporating details of operation carried out. During the operation accused Tarun Uppal @ Satish Kumar and others were arrested. It is further stated that IBPS had awarded the work of Common Written Examination (On-line) for recruitment of clerical cadre to Tata Consultancy Services (hereinafter referred as TCS) scheduled at 13.12.2014. Investigation has revealed that TCS had nominated Ideal Institute, Ghaziabad.

It is stated that investigation has revealed that examination dated 13.12.2014 in respect of Roll Number 1580507062 allotted to candidate accused Shravan Yadav was scheduled at afternoon session in Ideal Institute of Technology, Govindpuram, Ghaziabad. Shri Vikrant Singh Chauhan was CEO of Ideal Institute and Shri S.K. Jain, Senior Manager, Bank of Baroda, Ghaziabad was the Venue Bank Officer on 13.12.2014 at the examination centre Ideal Institute of Technology alongwith Ms. Kamna Sharma, Trainee Probationary Officer, Bank of Baroda, Crossing Republic, Ghaziabad. Raj Veer Verma, Operations Executive was the Examination Centre Incharge of Ideal Institute of Technology on behalf of TCS along with three other Operations Executives from TCS namely Shri Madhvesh Rai, Puneet Gaur and Ajay Sharma.

It is further stated that accused Tarun Uppal @ Satish Kumar was arrested on 13.12.2014 at Ideal Institute of Technology, Ghaziabad after completion of the IBPS examination in afternoon session as he dishonestly and fraudulently appeared in the examination on behalf of the candidate accused Shravan Yadav (Roll No. 1580507062) and completed the on-line examination through computer system No. C262 in the Lab-229-A of the Ideal Institute of Technology, Ghaziabad.

It is alleged by the CBI that accused Tarun Uppal @ Satish Kumar, while appearing in IBPS examination had completed formalities purporting himself as the real candidate and had signed and put his LTI (Left Thumb Impression) on the admit card/ call letter for IBPS

examination dated 13.12.14 bearing roll number 1580507062 as well as against the name of accused Shravan Yadav at the serial number 262 on the attendance list in immediate presence of invigilator Shri Vipin Kumar at Lab 229-A in the examination centre. It is also stated that accused Tarun Uppal also wrote the details like roll number, registration number on the photocopy of Aadhar Card Number 518245382976 issued in the name of accused Shravan Yadav in the immediate presence of invigilator and thereafter had completed the said online examination.

It is further alleged by the CBI that accused Tarun Uppal, just after the completion of examination was found in the possession of incriminating documents like Aadhar Card, Voter ID Card issued in the name of accused Shravan Yadav and one photograph and thereafter he was arrested by CBI on the spot.

It has been stated by the CBI vide the chargesheet in the present case that accused Sharan Yadav was arrested on 14.12.2014 outside the Ideal Institute and his personal search led to recovery of two shoulder bags. The bag belonging to accused Tarun Uppal was recovered from accused Shravan Yadav containing PAN Card, Voter ID Card, Driving Licence all in the name of accused Tarun Uppal s/o Sh. Satish Uppal/ Satish Kumar. One laptop identity card issued by Infosys and one Samsung Mobile having two SIM cards was also recovered.

As per the police report, accused Sanjiv Kumar who was arrested during course of investigation was found to be in criminal conspiracy with accused Tarun Uppal@ Satish Kumar. Accused Sanjeev Kumar was the collection agent of accused Tarun Uppal for collection of illegal money extracted by candidates of competitive examination. An amount of Rs. 6.5 Lacs was recovered at the time of arrest of accused Sanjeev Kumar which was to be delivered to accused Tarun Uppal as the amount collected from candidates.

It is also stated that accused Sanjeev Kumar and Tarun Uppal were maintaining an email id sk870928@gmail.com and rajivkumarsingh2013@gmail.com and both had access in these e-mail ids and both were in contact. The data available in the inbox of the aforesaid emails was deleted by unknown source of accused Tarun Uppal/ Sanjeev Kumar. It is also stated that no role of IBPS officers or TCS officers was ascertained in commission of the alleged act.

As such it is concluded in the chargesheet that the facts discloses commission of offences u/s 120B, 201, 419, 420, 467, 468, 471 of IPC and S. 66A of Informtion of Technology Act, 2000. Accordingly, the chargesheet was filed against the accused Tarun Uppal @ Satish Kumar, Shravan Yadav & Sanjeev Kumar and they were sent up to face the trial.

Complete set of copies were supplied to all three accused persons on 09.04.15. On 14-10-2016 formal charge was framed by my Ld. Predecessor against accused persons, to which all the accused persons pleaded not guilty and claimed trial. It maybe noted that the cognizance was taken by my Ld. Predecessor in S. 66A of IT Act, 2000 also but the charge regarding the same was not framed as the section was struck down by Hon'ble Apex Court of

India. When the cognizance was take the section was in force but when charges were framed the law was struck down by Hon'ble Apex Court. Further, for sake of brevity, the charges framed for the offences under IPC, 1860 against each of such accused persons are mentioned below:

Tarun Uppal	120B	201	419	420	467	478	471
Shravan Yadav	120B	-----	-----	420	467	468	471
Sanjeev Kumar	120B	201	-----	420	467	468	471

Material Evidence in Brief :

In order to prove its case prosecution has examined as many as 13 prosecution witnesses. The brief depositions of the prosecution witnesses are as follows :

PW1 Vipin Kumar has deposed that he was working as Lab Assistant in Ideal Institute of Technology, Ghaziabad during the time of incident. He has deposed that on 13.12.2014 he was working on the same post in the institute and he was appointed as Invigilator for the exam conducted by IBPS. He has stated that exam was in two shifts- morning session and afternoon session. He has further deposed that signatures and fingerprint impressions on call letter pertaining to Roll Number 1580507062 related with candidate Shravan Yadav were made in front of him. Such Call Letter was exhibited as Exhibit *ka-1*. Fingerprint impression was identified at point A in such exhibit. Signatures of Shravan Yadav were identified by him at point B and C. He has further deposed that signatures at Point B and C were compared by him with the scanned signatures of candidate Shravan Yadav and he had found difference between them. He has further testified that he had gone to meet TCS officials regarding the same and asked Shravan Yadav to stay there for a while but Shravan Yadav ran away. He has further stated that he had asked the officials present at the ground floor to nab him and he was caught and produced before CBI officials who were present at the institute. He has further deposed that CBI officials had said that he should be allowed to appear in exam and subsequently he was allowed to appear and he had made signatures and finger print impressions on attendance sheet. Such attendance sheet was exhibited as *ka-2*. Signatures and finger impressions were marked as Q18 and Q19. He has also deposed that the person purporting himself as Shravan Yadav had written Roll Number, Registration Number and Password on photostat copy of Aadhar Card. Such document was exhibited as Exhibit *ka-3*. He has also identified accused Tarun Uppal in court and has testified that he was the same person who was impersonating himself as Shravan Yadav. He has further stated that accused Tarun Uppal had completed all the formalities and had appeared in the said examination. He has also proved the list of candidates of the lab which was exhibited as Ex. *ka-4*. Furthermore, he has identified his signatures on memorandum of proceedings which was exhibited as Ex. *ka-5*. His signatures are marked at point A.

In his cross examination he has admitted that there was no written order vide which he was assigned the duty of Invigilator. He has deposed again in his cross examination that he was appointed as invigilator in Lab 229-A. He has also stated that he had stayed in the examination centre till approximately 10:30 PM and had signed the Memorandum of Proceedings (Ex. ka-5) at that time only. He has denied the suggestion that he had deposed falsely in the court.

PW 2 Sandeep Kumar Jain was the Venue Bank Officer for the examination. He has deposed that he was present on the day of examination i.e. 13-12-14 at Ideal Institute of Technology. He had deposed that CBI team had arrested 2 persons in the morning session and one from the afternoon session on the abovesaid day of examination. The person who was arrested in afternoon session was Satish Kumar @ Tarun Uppal. He has further deposed that a Voter Id card and a Aadhar Card in the name of Shravan Yadav was found from the possession of Tarun Uppal@ Satish Kumar which were exhibited as Material Exhibit 1 and Material Exhibit 2. He has also identified his signatures on Memorandum of Proceedings (Ex. ka-5) and has deposed that all the proceedings were done in front of him.

In his cross examination he has deposed that he was appointed as Venue Bank Officer for the said examination. He has deposed that IBPS guidelines mentions about the duties of Venue Bank Officer. He has stated that he did not provide the copy of guidelines to CBI. He has also deposed about the procedure regarding the conduction of examination. He has deposed that he identifies Shravan Yadav as he had seen him in the court. Further in his cross examination he has deposed that he had informed higher officials that someone else is appearing on behalf of candidate Shravan Yadav and subsequently CBI officials had asked me to let Tarun Uppal who was impersonating as Shravan Yadav to complete the examination. He has deposed about the proceedings of Memorandum Ex. ka-5. His cross examination is consistent and natural.

PW 3 is Manoj Kumar Sharma. He was posted as SWO-A in Bank of Baroda in 2014. He is the specimen witness and has deposed that on 23-12-14 specimen finger impressions and handwritings of accused Tarun Uppal were taken in front of him. Such documents are exhibited as Joint Ex. Ka-7, ka-8, ka-9, ka-10. He has identified his signatures as well as Tarun Uppal's signatures on it.

His cross examination is consistent and natural.

PW 4 Supriya Sahariyha was working as Manager (Employee Relations) in Infosys in 2014. She has proved Ex. Ka-11 vide which she had provided the details of Infosys's employee Tarun Uppal to CBI.

In her cross examination she has deposed that a laptop of Toshiba make S.L. No. 8A172966H was given by Infosys to accused Tarun Uppal.

PW 5 Darpan Jain was working as Sccale-1 Officer in Bank of Baroda, Navyug Market, Ghaziabad. He has proved the Memorandums Ex. Ka12, Ex. Ka13, Ex. Ka14 dated 19-12-14, 20-12-14 & 21-12-14 respectively vide which proceedings were done in front of him regarding messages of mobile phone.

In his cross examination he has deposed that he did not remember that the bag from which the mobile phone was taken out was sealed or not. He has further deposed that he had signed on Memorandums Ex. *ka-12, ka-13, ka-14* at around 7PM on all 3 days.

PW 6 Sandeep was posted as Inspector in Central Excise and Customs at Ghaziabad. He has deposed that Gmail account was opened in front of him and subsequently all data was deleted by someone from that account. He has proved the memorandum of proceedings Ex. *ka-15*. He has proved another memorandum Ex. *ka-16* vide which messages of Samsung Duos Mobile's messages were written in front of him.

In his cross examination he has deposed that CBI did not give any attendance certificate with respect to such proceedings. He has again deposed in his cross examination that in evening all data from emails was deleted.

PW 7 Satendra Kumar Juyal has deposed that a mobile phone was opened and was switched on in front of him. Subsequently Whatsapp and Viber Chats were opened and its content was noted down on a Memorandum exhibited as Ex. *Ka 17*. He has identified signatures of himself as well as Tarun Uppal's signatures on such exhibit.

PW 8 Pankaj Sharma was posted as Manager in Regional Office of Syndicate Bank, Ghaziabad. He has deposed that his Regional Manager had appointed him to appear as witness in such proceedings of CBI. He has proved the Memorandum of disclosure statements which were made in front of him. (Ex. *Ka-18, Ex. Ka-19 & Ex. Ka-20*).

In his cross examination he has admitted that the bag in which mobile and laptop was kept was not sealed in front of him. He has denied the suggestion that CBI officials had obtained his signatures from Regional Office of Bank only and he had not witnessed such proceedings. He has further admitted that on such disclosure statements only CBI Inspector had signed. It did not bear his or Tarun Uppal's signatures.

PW 9 Rajendra Kumar Sharma was posted as Technician in Northern Railway, Ghaziabad. He was asked by his senior officials to appear as witness in CBI proceedings. He has deposed that mediator Sanjeev was arrested in Dasna in front of him and CBI officials. He has stated that accused Sanjeev told us that he had come to meet Tarun Uppal as he had to handover the part payment Rs. 6.5 Lacs which was the consideration amount for 3 candidates. He has deposed that Sanjeev was carrying a bag of Military Green colour in which he was having cash. He has deposed that CBI officials had asked him to search the bag and he had counted it and found that it was 6.5 lacs rupees. He has proved the Memorandum of proceedings exhibited as Ex. *ka-21*.

In his cross examination he has deposed that he had joined such proceedings of CBI on oral directions of his higher officials. He has further deposed that memorandum was prepared at CBI office after returning from the place of arrest. He has again deposed that 6.5 lacs rupees were recovered from the military green coloured bag. He has stated that the place from which Sanjeev was arrested and recovery was done was a national highway. Further, he has denied the suggestion that he had signed the Memorandum from his Railway office only.

PW 10 Deepak Raj Handa has deposed that he was retired from the post of HOD cum Principal Scientific Officer (Document) in year 2018. He has further deposed about his experience and qualifications. He has testified that he has examined and compared Q13, Q14, Q15, Q17 and Q18 with S155 to S173 with the help of scientific instruments and had found that both are written by same person. He has identified his signatures on Handwriting Examination Report No. CFSL-2015/A-336 dated 08-02-2016 and has proved its contents and has also given the detailed reasons thereof. It is mentioned in para 3 of the aforesaid report - "Handwriting evidence points to the writer of specimen english writings marked S155 to S 173 attributed to Tarun Uppal signing as Shravan being the person responsible for writing the questioned english writing marked Q13 to Q15, Q17 and Q18, due to the following reasons...". Such report has been marked as Exhibit *ka-22*. Thus, it is duly proved by his testimony that it was accused Tarun Uppal only who had appeared in place of Shravan Yadav and had signed at points Q13, Q14 and Q15 on Call Letter (Ex. *ka-1*)

PW 11 Mangesh Krishna Ratnam has deposed that he was posted as Senior Scientific Officer Grade II (Finger Print) cum Asst. Chemical Examiner, Govt. Of India, CFSL, New Delhi. He has stated about his experience and qualifications. He has deposed that he has examined and compared Q16 and Q19 (Questioned Thumb Impression) with S1 to S39, S63 to S100 and S125 to S154 (Specimen left and right thumb impressions) with the help of scientific instruments and found that Questioned Thumb Impression marked with Q16 and Q19 are identical with the specimen left thumb impression of Tarun Uppal @ Satish Kumar marked as LTI 143 (S-143). He has identified his signatures on Fingerprint Examination Report No. CFSL 2015/A-0336 dated 31.03.2015 and proved its contents and also gave detailed reasons for the same. The aforesaid report is marked as Ex. *ka-24*. Thus, it is duly proved by his testimony that it was accused Tarun Uppal only who had appeared in place of Shravan Yadav and had marked his finger print at point Q16 on the call letter (Ex. *ka-1*) and also at point Q19 on the attendance list (Ex. *ka-2*).

PW 12 Chandra Bhan Pachauri has deposed that on directions of Zonal Engineer (Electricity), Northern Railways, he had gone to CBI office to witness the proceedings. He has deposed that he alongwith CBI officials had gone outside the campus of Indian Institute of Technology, Ghaziabad. He has stated that accused Shravan Yadav was standing there with 2 bags out of which one bag had belonged to accused Tarun Uppal. Some articles like ID Cards, Mobile, Laptop were recovered. A search list was prepared in such respect and he has identified his signatures on it.

In his cross examination he has deposed that they had seen Shravan Yadav outside the college's campus and Shri Bhandari, CBI officer had arrested him. He has deposed that search list was prepared at CBI office. He has stated that both the bags were sealed at the time of search only. He has admitted that he did not remember the colour of the bags as incidents relates to 7 year old incident. He had further denied the suggestion that accused Shravan Yadav was not arrested before him.

PW 13 S.K. Pandey is the IO of this case. He has deposed regarding the investigation conducted in the present case.

The Defence :

All 3 accused persons were examined under section 313 of CrPC on 27/09/2021. They have pleaded innocence and has submitted that they have been falsely implicated by the CBI. Defence has given 3 witnesses in their support which are as follows:

DW1 Manohar Vasudev Desai had retired from the post of General Manager from IBPS in 2018. He has stated that IBPS society is a registered society under Registration of Societies Act. He has deposed that Document D-21 paper number 248 *ba-1* to 248 *ba-32* is the true copy of original which is in the Court Case No. 02/15 CBI versus Naveen Tanwar. Such document is exhibited as Ex. *Kha- DW1/1*. He has further stated that D-22 Paper Number 249 *ba-1* to 249 *ba-35* are true copy of original which are in Court Case Number 02/15 CBI/ Naveen Tanwar. He has further testified that guidelines of IBPS are required to be complied by Venue Bank Officer and the officials of TCS.

In his cross examination he has admitted that he was not present on the day of examination in question i.e. 13-12-14 conducted by IBPS at Ideal Institute of Technology, Govindpuram, Ghaziabad.

DW 2 Mudit Mathur has worked in TCS from 2011 to 2019. He has stated that their duty is to check the functionality of computers at the examination centres and to check the ID cards and admit cards of the candidates. He has further testified that to ensure that there is no case of impersonation or any irregularity in the online exam, it is the duty of TCS officials to compare the photographs and ID cards of the candidates properly. He has further deposed that Ex. *Kha DW1/1* are the guidelines issued by IBPS. He has further stated that guidelines to the officials of TCS are given by TCS only and not from IBPS. He has further stated that if there arises a case in which signatures of candidate does not match with the signatures on admit card, then decision has to be taken by Observer who is generally the Venue Bank Officer.

In his cross examination by Ld. Asst. PP he has admitted that he was not present on 13/12/14 on date of examination.

DW 3 Rajveer Verma was an employee of TCS and he was present on 13.12.14 in the said examination. He has deposed that he had got trained by TCS for proper conduction of examination. He has further stated that if any discrepancy is found in the candidate's documents, information is given to observer. He has further stated that the accused in this case was also gone through the proper procedure as required by the TCS guidelines. He has testified that the signatures are not verified at the entry gate of the examination centre, they are verified inside the exam hall only. He has deposed that all due procedure was followed on the day of examination. He has stated that he cannot tell if the signatures on Ex. *ka-1* belongs to Shravan Yadav or not as they were not made in front of him. He has stated that signatures of candidate Shravan Yadav did not match with the scanned signatures and therefore the observer was intimidated by them.

In his cross examination by Ld. Asst. PP he has admitted that Joint Ex. ka-5 is the memorandum of proceedings and all of the proceedings were done in front of him. He has identified his signatures which are marked at point E. He has further stated in his cross examination that on the day of said examination Sh. Vikrant, CEO, Ideal Institute of Technology, Ghaziabad had informed me and Sh. SK Jain that signatures of the candidate did not match who has appeared in place of Shravan Yadav. Subsequently, on direction of CBI the candidate was allowed to appear in the examination. He has further testified that the concerned person who has appeared in place of Shravan Yadav had told his name as Satish Kumar s/o/ Khairati Lal.

The Arguments :

I have heard the arguments from both the sides and have gone through the case file. It is argued by Ld. Asst. PP for CBI that prosecution has proved the case beyond reasonable doubt. The deposition of witnesses along with the documents and expert evidence has proved the case of prosecution. It is further argued by the Ld. APP that not only by prosecution evidence but also with the aid of defence evidence particularly DW3 the case of prosecution gets proved. Ld. APP has thrown light on the testimony of DW3 in this regard. It is also contended by Ld. APP that fingerprint science is perfect science in eyes of law. And the evidence of experts PW10 and PW11 is further corroborated by other witnesses like PW1, PW2 etc. Which makes the case of prosecution proved beyond reasonable doubt. Thus, all of such accused be convicted for all the charges against them.

Per Contra, Ld. Counsel for accused Tarun Uppal and Sanjeev Kumar has argued that it is admitted that it was accused Tarun Uppal only who had signed on the call letter as well as the attendance list in the said examination on 13-12-14 conducted at Ideal Institute of Technology, Ghaziabad. It has been further submitted that accused Tarun Uppal works as part time guide and tuition teacher for the students of competitive exams and he had gone to the exam centre for the same purpose and thereafter he was nabbed and falsely implicated by CBI and was forced to make signatures and thumb impressions on certain documents. It is further argued that the timings of the said examination was from 1:30 – 3:30 PM but accused Tarun Uppal was made to appear for the same from 02:00 to 04:00 PM. Reliance has also been placed upon the IBPS guidelines (Ex. DW1/1) in which times of the said exam are written. It is also contended that FIR as per the guidelines must be done by IBPS/ TCS officials whereas in the present case CBI has registered the FIR. It is also contended that as per the guidelines if any discrepancy in identity is found the candidate shall not be permitted to appear in exam. It is also contended that CBI has not taken the CCTV footages in the present case however the entire campus was equipped with CCTV. It is also argued that there is no evidence against accused Shravan Yadav and Sanjeev Kumar. Relying on the aforesaid submissions it is contended by Ld. Counsels for all of such accused persons that they deserve acquittal.

At this stage it would be appropriate to deal with the provisions of all substantive offences one by one.

Section 120 B r/w 201, 419, 420, 467, 468, 471 IPC :

Definition of criminal conspiracy.- When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means, such an element is designated a criminal conspiracy. Provided that no agreement except an agreement to commit an offence shall amount to criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily flows that unless the statute so requires, no overt act need be done in furtherance of conspiracy and the object of the combination need not be accomplished, in order to constitute an indictable offence.

Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment.

Further, it is settled law that in the case of conspiracy there cannot be any direct evidence. Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal.

Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and it is a matter of common experience that the direct evidence to prove conspiracy is rarely available. Therefore the circumstances proved before, during and after the concurrence have to be considered to decide about the complicity of the accused.

The inferences are normally deduced from the acts of parties in pursuance of a purpose in common between the conspirators. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

Having reproduced the law related to offence of conspiracy, let us now deal with the evidence available on record against the accused persons with respect to the alleged offences. It may be noted that it is proved by the testimony of PW1 (Invigilator) and PW2 (Venue Bank Officer) that accused Tarun Uppal has impersonated himself at the place of original candidate i.e. accused Shravan Yadav by appearing, fulfilling all the formalities, in the said examination

of IBPS dated 13.12.14. Furthermore, PW1 has proved that accused Tarun Uppal by impersonating had appeared and had made signatures and finger print impressions upon the attendance sheet i.e. Ex. ka-2. Prosecution has also relied upon the expert evidence- both hand writing expert (PW10) and finger print expert (PW11) who have deposed relying upon their lab reports Ex. ka-22 and Ex. ka-24 that the finger prints as well as signatures on call letter (Ex. ka-1) and attendance list (Ex. ka-2) belongs to accused Tarun Uppal only. Such expert evidence is corroborated by the testimonies of PW1 and PW2.

Further, as far as role of accused Shraavan Yadav is concerned the testimony of PW12 is quite relevant here. PW12, Shri Pachauri has deposed that he had joined the CBI officials and CBI officer T.S. Bhandari had arrested accused Shraavan Yadav outside the campus of Ideal Institute of Technology, Ghaziabad. He has stated in his cross examination that the mobile of Tarun Uppal which is mentioned in the search list paper no. 12a/1 to 12a/4 was recovered from the possession of accused Shraavan Yadav. Thus, it is proved by the prosecution that accused Shraavan yadav had conspired with accused Tarun Uppal to make him wrongfully and dishonestly appear in the above said exam.

Coming to the involvement of accused Sanjeev Kumar, the testimony of PW9 Rajendra Kumar Sharma is relevant here. PW9 has deposed that he was the part of proceedings in which accused Sanjeev Kumar was arrested. He has deposed that accused Sanjeev Kumar was arrested in Dasna on National Highway and cash of Rs. 6.5 lacs was recovered from his possession. He has stated that accused Sanjeev Kumar had told that this payment was to be made for accused Tarun Uppal as consideration for appearing on behalf of 3 candidates. He has also proved the memorandum (Ex. ka-21) of such proceedings. Thus, it has been proved that accused Sanjeev in pursuance of the conspiracy was going to deliver the payment in cash for the act of impersonation/ wrongfully appearing on behalf of other candidates.

The law relating to conspiracy has been summarised by Hon'ble Apex Court in the matter of **State v. Nalini (1999) 5 SCC 253 (Rajiv Gandhi Assassination Case)** in Para No. 583 which is as under:

Some of the broad principles governing the law of conspiracy are summarised below:

1. *Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with the persons having the same intention. Not only the intention but there has to be the agreement to carry out the object of intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the crime for conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, the offence be committed.*

2. Acts subsequent to achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.
3. Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.
4. Conspirators may for example, be enrolled in a chain- A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled and the person whom he enrolls. There may be kind of umbrella spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be the present mutual interest. Persons maybe the member of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not the part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

Keeping in view the abovesaid principles and the observations stated above, in the considered view of this court, on the basis of evidence on record it is proved that accused Tarun Uppal in conspiracy with accused Shravan Yadav and Sanjeev Kumar had appeared wrongfully in examination by way of impersonating. It is also proved that all three of the accused have not acted separately. All three accused had their mutual interest in the conspiracy. Further, regarding conspiracy it must be remembered that law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of means. The encouragement and support which co-conspirators give to one-another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. It would have been utmost difficult for any of the accused, to execute alone such conspiracy. But with the combined efforts they were able to do the same. Under these circumstances, it is held that ingredients of section 120-B IPC are satisfied. Accordingly accused Tarun Uppal, Shravan Yadav and Sanjeev Kumar are convicted u/s 120-B r/w 201, 419, 420, 467, 468, 471 IPC.

Section 419 IPC :

Section 419 IPC states the punishment for cheating by personation which is defined under section 416 IPC which states that A person is said to cheat by personation if he cheats by pretending to be some other person, or by knowingly substituting other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

It is also held in matter of *Aswini V. Emperor* AIR 1936 Cal 403: 37 LJ 1156 that “Where the accused sat at an examination personating another and submitted answer papers purporting to be the answer papers of that other, he was guilty of Cheating by impersonation as also for the offence of forgery.”

Coming to the case at hand, it is proved by the testimony of PW10 (Hand writing expert) and PW11 (Finger print expert) which is corroborated by the testimonies of PW1 (Invigilator) and PW2 (Venue Bank Officer) that accused Tarun uppal had appeared in the examination by pretending himself to be Shraavan Yadav. It is also proved that he had signed in the name of Shraavan Yadav on Call Letter (Ex. ka-1) and Attendance List (Ex. ka-2). Thus it has been proved beyond a shadow of reasonable doubt that accused Tarun Uppal had cheated by personation and accordingly the ingredients of Section 419 are fulfilled and accused Tarun Uppal stands convicted for the offence of S. 419 IPC, 1860.

Section 420 IPC :

Section 420 IPC states that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Thus, Section 420 IPC deals with cheating and dishonestly inducing delivery of property. The offence of cheating is made of two ingredients. Deception of any person and *fraudulently* or *dishonestly* inducing that person to deliver any property to any person or to consent that any person shall retain any property. To put it differently, the ingredients of the offence are that the person deceived delivers to someone a valuable security or a property, that the person so deceived was induced to do so, that such person acted on such inducement in consequence of his having been deceived by the accused and the accused acted fraudulently or dishonestly when so inducing the person. To constitute the offence of cheating, it is not necessary that the deception should be by express words, but it may be by conduct or implied in the nature of transaction itself.

Such offence of cheating is made punishable by sections 417 and 420 IPC. Section 417 provides punishment for a simple case of cheating whereby the person cheated is injured otherwise than by being induced to part with property.

Section 420 deals with certain aggravated forms of specified classes of cheating. It deals with the cases of cheating, whereby the deceived person is dishonestly induced (a) to deliver any property to any person; or (b) to make alter or destroy (i) the whole or any part of valuable security; or (ii) any thing which is signed or sealed, and which is capable of being converted into valuable security. It is required to prove that the victim has parted with the property due to dishonest inducement of the accused. The property so delivered must have some money value to the person cheated. Section 420 is an aggravated form of Section 417.

Coming to controversy in hand, having reproduced the law related to offence of Section 420 IPC, let us now deal with the evidence available on record against the accused

persons with respect to the alleged offences. It may be noted that it is proved by the testimony of PW1 (Invigilator) and PW2 (Venue Bank Officer) that accused Tarun Uppal has impersonated himself at the place of original candidate i.e. accused Shravan Yadav by appearing, fulfilling all the formalities, in the said examination of IBPS dated 13.12.14. Furthermore, PW1 has proved that accused Tarun Uppal by impersonating had appeared and had made signatures and finger print impressions upon the attendance sheet i.e. Ex. ka-2. PW1 had identified accused Tarun Uppal in the court also. Prosecution has also relied upon the expert evidence- both hand writing expert (PW10) and finger print expert (PW11) who have deposed relying upon their lab reports Ex. ka-22 and Ex. ka-24 that the finger prints as well as signatures on call letter (Ex. ka-1) and attendance list (Ex. ka-2) belongs to accused Tarun Uppal only. Such expert evidence is corroborated by the testimonies of PW1 and PW2. Hence, it is proved that accused Tarun Uppal had appeared in the said exam pretending as Shravan yadav.

As far as role of accused Shravan Yadav is concerned, PW 12 had deposed that he had joined the arrest proceedings of accused Shravan Yadav. Shravan Yadav was found outside the campus of Ideal Institute of Technology, Ghaziabad. PW12 had also deposed that on day of arrest accused Shravan Yadav had said before him and CBI officials that Tarun Uppal had appeared in the exam in place of him and a bag of Tarun Uppal was recovered from his possession containing the mobile phone of Tarun Uppal. Furthermore, on conjoint reading of the evidence discussed above, in considered view of this court, it is proved by CBI that accused Shravan Yadav has cheated the IBPS/ State authorities by dishonestly inducing the state to believe the wrongful presence of accused Tarun Uppal in place of himself in the examination dated 13.12.14 at Ideal Institute of Technology, Ghaziabad.

It was held in *Nara Singh Murari v. State* AIR 1977 SC 1174 that “*An admission card enabling the accused to sit for M.A. examination has pecuniary value and is property within the meaning of Section 420.*” Thus, keeping in view the above stated findings and the law discussed above, it can be said that accused Tarun Uppal along with accused Shravan Yadav have cheated the IBPS/ state authorities by dishonestly inducing them to believe the wrongful presence of the candidate in the said exam to deliver the property. Thus, the elements of S. 420 are satisfied and accordingly accused Tarun Uppal and Shravan Yadav stands convicted for the charge of S. 420 IPC.

Further, as far as role of accused Sanjeev Kumar is concerned prosecution has failed to lead sufficient evidence against such accused for the charge of S. 420 and accordingly accused Sanjeev Kumar stands acquitted under Section 420.

Section 467 IPC :

Section 467 of IPC states that 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, interests or dividend thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt for the delivery of any movable

property or valuable security, shall be punished for imprisonment of life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The essential elements of offence under section 467 are as follows:

- (i) Accused committed forgery;
- (ii) He did so by preparation of a forged document or electronic record in the manner provided in secs. 463 and 464.

As per section 463 IPC whoever makes any false documents or false 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.

In order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community.

It is also held in matter of *Aswini V. Emperor* AIR 1936 Cal 403: 37 LJ 1156 that “Where the accused sat at an examination personating another and submitted answer papers purporting to be the answer papers of that other, he was guilty of Cheating by impersonation as also for the offence of forgery.”

Coming to the case at hand, it is proved by the testimony of PW10 (Hand writing expert) and PW11 (Finger print expert) which is corroborated by the testimonies of PW1 (Invigilator) and PW2 (Venue Bank Officer) that accused Tarun uppal had appeared in the examination by pretending himself to be Shravan Yadav. It is also proved that he had signed in the name of Shravan Yadav on Call Letter (Ex. ka-1) and Attendance List (Ex. ka-2). Thus, it has been proved beyond a shadow of reasonable doubt that accused Tarun Uppal had forged the document i.e. Call Letter (Ex. ka-1) and Attendance List (Ex. ka-2) which comes under the definition of valuable security and accordingly the ingredients of Section 467 are fulfilled and accused Tarun Uppal stands convicted for the offence of S. 467 IPC, 1860.

As far as accused Shravan Yadav and Sanjeev Kumar are concerned, prosecution has failed to lead evidence in their respect with regard to offence of forgery and accordingly both of them stands acquitted for the charge of Section 467 IPC.

Section 468 IPC :

Section 468 IPC states that 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.

The essential ingredients of the offence under section 468 are as follows:

- (i) There should be a forgery in respect of the document or electronic record in question.
- (ii) The intention of the forgery should be that the forged document or electronic record is to be used for purpose of cheating.

Coming to the case at hand, it is proved by the testimony of PW10 (Hand writing expert) and PW11 (Finger print expert) which is corroborated by the testimonies of PW1 (Invigilator) and PW2 (Venue Bank Officer) that accused Tarun uppal had appeared in the examination by pretending himself to be Shravan Yadav. It is also proved that he had signed in the name of Shravan Yadav on Call Letter (Ex. ka-1) and Attendance List (Ex. ka-2). Thus, it has been proved beyond a shadow of reasonable doubt that accused Tarun Uppal had forged the document i.e. Call Letter (Ex. ka-1) and Attendance List (Ex. ka-2). Thus, it is duly proved that accused had committed forgery and it is also proved as discussed above that such act was done by him dishonestly and fraudulently to decieve the IBPS/ state authorities. Thus he has also committed cheating. Accordingly, the ingredients of Section 468 are fulfilled and accused Tarun Uppal stands convicted for the offence of S. 468 IPC, 1860.

As far as accused Shravan Yadav and Sanjeev Kumar are concerned, prosecution has failed to lead evidence in their respect with regard to offence of forgery and accordingly both of them stands acquitted for the charge of Section 468 IPC.

Section 471 IPC :

Section 471 of IPC states that whoever fraudulently or dishonestly uses as genuine any document or electronic record 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 or electronic record.

To meet out the four corners of Section 471 it has to be proved by the prosecution that accused has fraudulently or dishonestly used the forged documents as genuine. On the basis of the documentary and oral evidence given by prosecution, it may be noted that, as discussed above it is proved that accused Tarun Uppal had forged the documents i.e. Ex. ka-1 and Ex. ka-2 and he being impersonating at place of accused Shravan Yadav had knowledge the document is forged which he had used dishonestly and fraudulently at the examination centre as genuine. Accordingly, the ingredients of S. 471 are fulfilled and accused Tarun Uppal stands convicted for the charge under Section 471, IPC 1860.

As far as accused Shravan Yadav and Sanjeev Kumar are concerned, prosecution has failed to lead any evidence in their respect with regard to offence of Section 471 and accordingly both of them stands acquitted for the charge of Section 468 IPC, 1860.

Section 201 IPC :

Section 201 IPC states that Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence - shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with imprisonment for life - and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished

with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years imprisonment - and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

The essential ingredients of Section 201 IPC are :

- An offence has been committed;
- The accused knew or had reason to believe that such offence has been committed;
- The accused cause disappearance of evidence thereof;
- The accused gave false information in respect thereof;
- The accused knew or had reason to believe the same to be false;
- The accused did so with intention to screen the offender from legal punishment.

Coming to the controversy at hand, it may be noted that PW6 has deposed that he was present on 17-12-14 alongwith CBI officials when the email accounts were opened by CBI during investigation. He has stated that when the email account was opened it contained some data and the same got deleted and the accounts were logged out at around 4 PM in the evening.

It is imperative to note here that if for the sake of arguments it is to be believed by the abovesaid testimony of PW6 that the data got deleted; at the same time prosecution has failed to prove that such data was deleted by any of the accused persons. Also, prosecution has failed to lead sufficient evidence in such regard. It may also be noted that it is well settled proposition of law that suspicion however strong cannot take place of proof.

Further, this court agrees with the submission made by Ld. Counsel for defence that all three accused were in custody on 17-12-14 and hence it is not possible for them to cause such disappearance of evidence.

Therefore, it can be said that the essential ingredients of Section 201 IPC are not met out and hence accused Tarun Uppal and Sanjeev Kumar stand acquitted for Section 201 IPC.

Further, it was raised by Ld. Counsel for defence that accused Tarun Uppal was forced to put thumb impressions and signatures on the call letter and attendance list of accused Shravan Yadav. It was also contended that by the defence in examination under section 313 CrPC that accused Tarun Uppal was coming from his sister's house and there he saw Shravan whom he knew from Kanpur and by mistake Shravan forgot his bag with him. Thereafter, when he was going to return the bag to him CBI nabbed him as impersonator. Defence has also placed reliance of the IBPS guidelines as stated above. However, as discussed above the case of prosecution has been proved beyond a shadow of reasonable doubt by CBI. Defence has failed to lead any cogent and convincing evidence with regard to their version.

Thus, I cannot but disagree with the submissions and contentions raised by the learned counsels for defence. Or to put it in other way, the contentions raised by the defence are wholly unfounded and are contrary to the present evidentiary matrix at hand.

Accordingly, accused Tarun Uppal stands convicted for the charges of 120B, 419, 420, 467, 468 and 471 of IPC. Accused Shravan Yadav stands convicted for the charges of 120B, 420 of IPC. Accused Sanjeev Kumar stands convicted for the charge of 120B IPC.

Bail bonds with respect to such accused stands cancelled and sureties stands discharged. Compliance under section 437-A CrPC be done within one week.

*Announced in open court on 10/06/2022 and
all the pages from 1 to 18 are signed by me.*

**(SHIVANK SINGH)
Special Judicial Magistrate (CBI)
Ghaziabad**

10.06.2022

Present: Ld. Asst. PP for CBI.
Ld. Counsels for Convicts.

ORDER ON SENTENCE

It is argued by Ld. APP for CBI that convicts be given maximum punishment as they have caused an adverse impact on the society. It is further submitted by Ld. APP that offences like impersonation in examinations for recruitment also affects the members of the society who appear as genuine candidates.

Ld. Counsel for convict has argued that the convict shall be given minimum punishment.

Heard. It is imperative to note that charges against convicts are proved for the offences of conspiracy and impersonation in the IBPS exams for recruitment in Nationalised Banks. Recruitment to public sector must command public confidence. But when such foulplay happens it causes hardships to the candidates who are actually deserving and leaves a dark impact on the society. The role of youth will determine India's future and such *Munnabhais* are detrimental for India's future. Considering the entire facts and circumstances;

For Convict Tarun Uppal

1. Convict Tarun Uppal for the offence under **Section 120-B** r/w 419, 201, 420, 467, 468, 471 IPC shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
2. Convict Tarun Uppal for the offence under **Section 419 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
3. Convict Tarun Uppal for the offence under **Section 420 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
4. Convict Tarun Uppal for the offence under **Section 467 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
5. Convict Tarun Uppal for the offence under **Section 468 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
6. Convict Tarun Uppal for the offence under **Section 471 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.

For Convict Shravan Yadav

1. Convict Shravan Yadav for the offence under **Section 120-B** r/w 419, 201, 420, 467, 468, 471 IPC shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.
2. Convict Shravan Yadav for the offence under **Section 420 IPC** shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.

For Convict Sanjeev Kumar

1. Convict Sanjeev Kumar for the offence under **Section 120-B** r/w 419, 201, 420, 467, 468, 471 IPC shall undergo rigorous imprisonment of 03 years and pay fine of Rs. 10,000/- each, in default to pay the fine they shall further undergo simple imprisonment for one month.

All the sentences shall run concurrently. Convicts are entitled to set off under section 428 CrPC, 1973 for the period already undergone in judicial custody, if any. Convicts be taken into custody. Copy of judgment and sentence be given free of cost to convicts.

(SHIVANK SINGH)
Special Judicial Magistrate (CBI)
Ghaziabad