

DLCT110001852024



**IN THE COURT OF MS. KAVERI BAWEJA,
ASJ/SPECIAL JUDGE (PC ACT), CBI-09 (MPs/MLAs Cases),
ROUSE AVENUE DISTRICT COURT,
NEW DELHI.**

Crl. Appeal No. 02/2024

In the matter of:-

1. Ranbir Singh Kharab

S/o Ch. Kartar Singh

2. Anita Kharab

W/o Sh. Ranbir Singh Kharab,

Both R/o VPO Mundhela Khurd

PS Jaffarpur Kalan, Delhi.

...Appellants

Versus

State

...Non-Appellant/Respondent

FIR No. : 329/2006

U/S : 409/420/506/120-B IPC

PS : EOW

Date of Institution of case	17.08.2009
Date of impugned judgment	13.12.2023
Date of order on sentence	24.02.2024

Date of Institution of Appeal	27.02.2024
Judgment reserved in Appeal	18.10.2024
Date of decision of Appeal	23.10.2024

J U D G M E N T

Brief factual background:-

1. By this appeal, the above named appellants have assailed the judgment and order on sentence dated 13.12.2023 and 24.04.2024 respectively passed by the Ld. Trial Court in case bearing Cr. No. 122/2019 FIR No. 329/2006 PS EOW titled as '*State Vs. Ranbir Singh Kharab & Ors.*'.

2. Ld. Trial Court, by the impugned judgment dated 13.12.2023, found the Appellants and other co-accused guilty of the alleged offences and convicted them for the offences punishable under Section 420 r/w 120-B of Indian Penal Code, 1860 (hereinafter referred as 'IPC').

3. Vide order on sentence dated 24.02.2024, the Appellants Sh. Ranbir Singh Kharab and Ms. Anita Kharab were sentenced to undergo rigorous imprisonment (RI) for 7 years, in addition to fine of Rs. 22 Lakhs for offence punishable under Section 420 IPC r/w 120-B IPC. In default of payment of fine, they were directed to undergo simple imprisonment (SI) of six months. They were, however, given benefit for the period already undergone by them in the custody and the same was directed to be set off.

4. Upon filing of the instant appeal, both the Appellants, who

were in custody, were ordered to be released on bail and the sentence of imprisonment was ordered to be suspended till disposal of this appeal. Both the Appellants were, however, directed to deposit Rs. 5 Lakhs each with the Ld. Trial Court in the form of FDRs towards the amount of fine/compensation awarded by the Ld. Trial Court.

5. Detailed arguments have been advanced by Sh. A. N. Aggarwal, Ld. Counsel for the Appellants and Sh. Manish Rawat, Ld. Additional PP for the State. I have considered the said arguments and gone through the entire trial court record.

6. Before deciding the appeal, it would be essential to briefly state the facts of the case. The facts as noted by Ld. Trial Court in the impugned judgment are as follows :-

‘3. The facts of the case, in brief, are that the accused persons, as aforementioned, during the period of 1998 to 2004 hatched a criminal conspiracy to cheat the general public, by way of a scheme floated through a finance company called M/s Jyoti Fair Finance Company (hereinafter referred to as the company).

4. As per the prosecution, the accused persons, in the furtherance of their criminal conspiracy, induced the general public to invest money in the company by alluring them with high interest rates and monetary gains, however, the accused persons never had the intention to return the money. Whatever payments, if at all made, were made to further lure/induce the innocent investors to make further investments. As per the prosecution, most of the victims are kith and kin of

the accused persons.

5. *It is alleged by the prosecution that the accused persons, despite repeated demands and requests never returned the money and eventually they closed the entire business, made false promises and commitments and even threatened the victims, if they asked for the return of the money.*

6. *The accused Anita Kharb was the Director of the aforementioned company. She gave receipts in the name of company and often induced the general public and her acquaintances to invest money in the company.*

7. *Accused Satprakash was not holding any position of responsibility in the company however, as per the prosecution, he too, like accused Anita Kharb, gave receipts in the name of company and often induced the general public and his acquaintances to invest money in the company.*

8. *Accused Ranbir Singh Kharb is an alleged king pin of the entire matter, even though he did not hold any position in the company however, as per the prosecution, he latently used to run the said company, without wearing any hat of Director/employee etc. Almost every victim has alleged inducement at the hands of the said accused.*

9. *Further, as per the prosecution story, the accused persons, in the course of their criminal conspiracy, fraudulently and dishonestly induced the complainant Sh. Pravin Kumar, to invest money in the company and in consequence thereof, the said complainant invested a sum of Rs.23 lakhs, without getting any return or refund.*

10. *Similarly, victims Ranbir Singh Dahiya, Girdhari, Om Prakash, Smt. Raj Bala, Ranbir Singh*

Dalal, Jaipal Malik, Kuldeep Singh, Vinod Kumar, Rajesh, Bijender, Akshay, Rajwati, Beena, Attar Singh, Smt. Omwati, Sh. Gajender Singh and Gyan Singh were also defrauded by the accused persons and they too, in the course of aforementioned criminal conspiracy, were made to deliver various sums of money to the accused persons.'

7. Vide orders dated 04.11.2009, Appellant no. 1 Ranbir Singh Kharab was charged for the offences punishable under Sections 420/409/506 r/w 120-B IPC whereas Appellant no. 2 Ms. Anita Arora was charged for the offences punishable under Sections 420/409 r/w 120-B IPC. Both the Appellants pleaded not guilty and claimed trial for the aforesaid charges.

8. The prosecution examined 65 witnesses in the course of trial. After recording of the statement under Section 313 Cr.P.C. the accused persons led evidence in their defence and examined as many as seven witnesses in their defence.

9. In para-253 of the impugned judgment, Ld. Trial Court enumerated the 22 witnesses who were the victims and who were allegedly cheated by the Accused. The table formulated by Ld. Trial Court highlighting the witnesses and the alleged cheated amount is as under:-

Sl.No.	Name of the Victim/PW	Alleged cheated amount
1.	PW-2 Sh.Pravin Kumar	Rs.23,00,000/-
2.	PW-3 Sh.Ranbit Dahiya	Rs.1.34 Crores

3.	Sh.PW-4 Sh.Attar Singh s/o Lal Singh	Rs.10,00,000/-, this sum is already covered under the sum averred by PW-3 Ranbir Dahiya
4.	PW-5 Sh.Girdhari	Rs.15,00,000/-
5.	PW-6 Randhir Singh	Rs.6,00,000/-, this sum is already covered under the sum averred by PW-2 Praveen Dahiya.
6.	PW-8 Baljeet Singh	Rs.5,00,000/-, this sum of already covered under the sum averred by PW-2 Praveen Dahiya
7.	PW-29 Parmila	Rs.9,00,000/-, this sum is already covered under the sum averred by PW-2 Praveen Dahiya.
8.	PW-35 Om Prakash	Rs.16,00,000/-
9.	PW-36 Ranbir Singh Dalal	Rs.5,00,000/-
10.	PW-37 Jaipal Malik	Rs.25,00,000/-, this sum includes the following: i) Rs.5,00,000/- of Master Lal Chand (PW-38); ii) Rs.6,00,000/- of PW-39 Sukhbir Singh; iii) Rs.2,00,000/- of Devender Dalal (PW-63); iv) Rs.5,00,000/- of Chander Singh Malik (not examined, as deceased); v) Rs.2,00,000/- of Rajender Singh (not examined, as deceased); vi) Rs.2,00,000/- of Om Prakash (not examined, as deceased).
11.	PW-40 Bal Kishan	Rs.2,00,000/-
12.	PW-41 Kuldeep Singh	Rs.20,20,000/-
13.	PW-42 Vinod Kumar	Rs.16,50,000/-
14.	PW-44 Smt.Raj Bala	Rs.6,00,000/-
15.	PW-45 Gajender Singh	Rs.4,50,000/-

16.	PW-46 Gyan Singh	Rs.4,00,000/-
17.	PW-50 Smt.Rajesh	Rs.2,50,000/-
18.	PW-52 Rajwati	Rs.6,00,000/-
19.	PW-53 Bijender	Rs.3,15,000/-
20.	PW-54 Beena	Rs.4,20,000/-
21.	PW-55 Omwati	Rs.5,00,000/-
22.	PW-61 Attar Singh	Rs.19,00,000/-
23	PW-64 Akshay	Rs.21,10,000/-, this sum is covered under the amount invested by PW-49 Phool Kaur and PW-62

10. After discussing the depositions of the above mentioned witnesses/victims, Ld. Trial Court concluded that the testimonies of only 6 victims viz., PW-2, PW-3, PW-4, PW-6, PW-8 and PW-29 etc. and the documents produced by them particularly Ex.PW-2/A, Ex.X-1, Ex.40/A etc. are the clinching evidences and these evidences taken together prove the offence of cheating and criminal conspiracy by the Appellants (and the co-accused Satya Prakash) beyond reasonable doubt.

11. Before dealing with the evidence relied upon by Ld. Trial Court, it would be relevant to note that though the Appellant no. 1 Ranbir Singh Kharab was facing trial for charges punishable under Section 420/409/506 r/w 120-B IPC, he was convicted only for the offence committed under Section 420 r/w 120-B IPC. Similarly, the Appellant no. 2 Ms. Anita Kharab was facing trial for charges punishable under Sections 420/409 r/w 120-B IPC with which she was charged. However, she was only convicted

under Section 420 r/w 120-B IPC.

Arguments, Analysis & Findings:-

12. Ld. Counsel for the Appellants has assailed the impugned judgment stating that the same is perverse and contradictory to the facts of the case. It is argued that the Ld. Trial court failed to consider the evidence on record in the correct perspective, particularly while dealing with testimonies of PW2 Sh. Pravin Kumar, PW6 Sh. Randhir Sing, PW8 Sh. Baljeet Singh and PW29 Ms. Pramila.

13. It is argued that a perusal of statements of above mentioned witnesses would show that there are major contradictions in their testimonies. It was argued that PW2 Sh. Pravin Kumar nowhere stated that Rs.9 Lakhs were in two installments, whereas PW29 stated that the alleged investment of Rs. 9 Lakhs was made in two installments. It is further contended that whereas PW2 deposed in his cross examination dated 17.12.2010 that he does not remember the date and month of this payment, but it was in the year 2001. However, PW29 in her examination in chief stated that the payment was made in November, 2002.

14. Ld. Counsel for the Appellants argued that PW2 and PW29 are admittedly closely related and major contradiction in their deposition clearly shows that case against the Appellants is false and Ld. Trial Court could not have relied testimony of said two witnesses in view of their contradictory statements.

15. Ld. Counsel for the Appellants also argued that PW29 turned hostile and questions put by Ld. APP was in contravention of Section 142 of the Evidence Act, in as much as Ld. Trial Court permitted leading question to be put to the witnesses in examination in chief.

16. It was next argued that the Ld. Trial Court decided the case in a mechanical manner and failed to consider that PW3 could not establish the money trail of Rs. 1,78,00,000/-. It is also pointed out that from the depositions of PW6, PW8 and PW29 it is clear that they have nowhere stated that they have invested alleged amount with the appellants through PW3 and the Ld. Trial Court failed to consider this aspect while passing the impugned judgment. It was further submitted that the entire version of the prosecution that Ex.X1 which is a Declaration-cum-Receipt allegedly signed by Appellant No. 2 Ms. Anita Kharab and issued by Appellant No. 1 Sh. Ranbir Singh Kharab is for the entire alleged amount of Rs. 1.78 Crores, however, none of the alleged investors/witness even stated anything about the issuance of any such Declaration-cum-Receipt by the Appellants.

17. Ld. Counsel for the Appellants also pointed out that there were several gaps/blanks in document Ex.X1 and the Ld. Trial Court could not have relied upon the said document keeping in view the totality of the facts of the case.

18. Further, though PW2 Pravin Kumar has deposed before the

Ld. Trial Court that Appellant no. 2 Ms. Anita Kharab had asked his father to write a receipt and she signed the receipt which was written by his father. However, in the entire testimony, PW3 Sh. Ranbir Singh Dahiya, who is father of PW2 Sh. Pravin Kumar, did not depose about said document. Further, it is contended that Ld. Trial Court fails to consider defence of the appellants that Ranbir Singh Dahiya stole cheques and documents and misused the same. It is further stated that deposition of prosecution witness is full of material improvements, exaggeration and contradiction and the same could have not formed basis of the conviction of the Appellants.

19. It is argued that Ld. Trial Court picked and chose the depositions of Prosecution Witnesses and wrongly convicted the Appellants. The impugned judgment is thus, stated to have been passed without appreciating the facts and circumstances of the case and is stated to be passed on conjectures and surmises. Hence, it was prayed that impugned judgment be set aside.

20. Ld. Additional PP for State on the other hand vehemently argued that the Ld. Trial Court has rightly appreciated the evidence, both oral and documentary on record. It was argued that the prosecution has led cogent and reliable evidence and that the impugned judgment does not suffer from any infirmity or illegality. It is submitted that PWs have categorically deposed against the Appellants and Prosecution has by way of their unimpeachable deposition coupled with documentary evidence on

record, been able to prove the guilt of Appellant beyond reasonable doubt.

21. Ld. Additional PP for State argued that FSL Reports duly support the case of Prosecution and already establish the guilt of the Appellants.

22. I have gone through the impugned judgment and also considered the evidence recorded before the Ld. Trial Court in its entirety. I have also considered the arguments advanced by Sh. Manish Rawat, Ld. Additional PP for the State as well as Sh. A. N. Aggarwal, Ld. Counsel for the Appellants.

23. As is apparent from the bare perusal of the impugned judgment that the Ld. Trial Court relied upon testimony of only six PWs/victims and held that it is their deposition, along with documentary evidence on record which has proved the offence of cheating and criminal conspiracy by the Appellants No. 1 Ranbir Singh Kharab and Ms. Anita Kharab, in addition to the third Accused Sataprakash. The said six PWs found reliable by Ld. Trial court are as follows :-

- 1) PW2 Sh. Pravin Kumar
- 2) PW3 Sh. Ranbir Singh Dahiya
- 3) PW4 Sh. Attar Singh
- 4) PW6 Sh. Randhir Singh
- 5) PW8 Sh. Baljeet Singh
- 6) PW29 Ms.Pramila.

24. Ld. Trial Court, while discussing the deposition of PW2 Sh. Pravin Kumar opined that he is the prime witness of the Prosecution and the entire case of the prosecution primarily hinges upon his testimony and his father PW3 Sh. Ranbir Singh Dahiya.

25. It is, thus, necessary to revisit the statement of PW2 as recorded before the Ld. Trial Court. In the course of his deposition, PW2 stated that the accused persons used to tell him that they should invest in their company. He also deposed that Appellant No. 2 Anita Kharab, who is his *Bua* asked his father to write a receipt and she signed the receipt, which is Ex.PW2/A. Ld. Trial court was of the opinion that the said witness correctly identified both the accused persons and also deposed that the accused persons, did not return the invested amount and also did not pay the interest accrued thereon. Ld. Trial Court was of the opinion that the witness PW2 proved the hand written receipt Ex.PW2/A and the same also found corroboration from the FSL Report, which certifies that signatures at point 'Q1' on receipt Ex.PW2/A are of Accused Anita Kharab.

26. A bare perusal of the receipt Ex.PW2/A would, however, reveal that contents of this document are entirely contradictory to the deposition of the prosecution witnesses. While on the one hand PW2 deposed that the accused persons induced him and the other victims to handover money to them for the purpose of

investing in their finance company, the receipt Ex.PW2/A on the other hand, states otherwise. The contents of the said receipt, on a bare reading, show that as per the receipt Ex.2/A the executant i.e. Accused Anita Kharab had taken Rs. 23 Lakhs from PW2 Sh. Pravin Kumar on various occasions as “a loan” for the purpose of business.

27. It is settled law that documentary evidence must take precedence over the oral evidence and the documents in question viz receipt Ex.PW2/A clearly finds mention that the sum of Rs. 23 Lakhs was taken by Accused Anita Kharab from PW2 as a loan over a period of time during the year 2001-2002 for the purpose of her business.

28. It is his own statement of PW2 Sh. Pravin Kumar that his father i.e. PW3 Sh. Ranbir Singh Dahiya had written the contents of said receipt on the asking of Accused Anita Kharab and she signed the receipt. Interestingly, however, PW-3 father of PW2 nowhere even whispered in his entire deposition that he wrote the receipt Ex.PW2/A or that the Accused Anita Kharab signed the same, even though he deposed about another receipt i.e. Ex.X-1.

29. It is also pertinent to mention that none of the Prosecution Witnesses gave any explanation as to why the term used in receipt Ex.PW2/A is ‘loan’ or that Rs. 23 Lakhs is stated to have been taken by Appellant Ms. Anita Kharab from PW2 as a loan when the alleged victims claim that to be an ‘investment’. Pertinently, as

per the chargesheet the complainant Sh. Pravin Kumar in his statement under Section 161 Cr.P.C. categorically stated that he has objected that he had not given the amount as loan, but the same was invested in the finance company but the accused persons managed to convince him that they will have to pay the more amount in the finance company. Thus, though the chargesheet finds mention of a statement of PW2 recorded under Section 161 Cr.P.C. to this effect, but, the witness i.e. PW-2 upon stepping into the witness box, failed to depose about any such thing. He did not utter any word or explained as to why the receipt Ex.PW2/A refers to as amount of Rs. 23 Lakhs as 'loan' advanced by him to his *Bua* namely Accused/Appellant Anita Kharab. The Prosecution did not cross-examine PW2 as this aspect nor any explanation came on record to clarify the use of term 'loan' in document Ex.2/A either in the testimony of PW3 or in testimony of PW2 who wrote the said receipt. The Prosecution also did not cross-examine PW2 to elicit the aforesaid explanation despite there being a statement of PW2 to this effect under Section 161 Cr.PC recorded on 27.04.2006.

30. Moreover, the Prosecution did not examine the Hand Writing Expert who gave his expert opinion about signatures of Appellant Ms. Anita Kharab on the said receipt Ex.PW2/A. In other words, the said report has only been exhibited by IO PW34 Inspector Sher Singh and the Prosecution did not examine the Hand Writing Expert, who gave the report Ex.PW34/AQ. It is settled law that merely exhibiting of a document cannot amount to

it being proved.

31. Be that as it may. The fact which emerges from the record is that since the documentary evidence in question i.e. Ex.PW2/A which is the prosecution's own document and duly exhibited by PW2 himself, itself mentions the amount of Rs. 23 Lakhs as 'loan' having been advanced to Appellant Ms. Anita Kharab, the prosecution case that the same was given by PW2 to her as a result of inducement or that there was an intention to cheat him on part of the accused persons, completely stands demolished.

32. Further, the mere fact that as per GEQD report Ex.PW34/AQ, the signatures of Appellant Ms. Anita Kharab appear on the receipt Ex.PW2/A, does not in any manner establish that the said amount was handed over to her by PW2 as a result of any inducement by the Appellant Ms. Anita Kharab or co-accused or that she committed the alleged offence of Section 420 r/w 120B IPC, particularly in view of the glaring contradiction in oral and documentary evidence, as discussed above.

33. Now, coming to PW3, who is admittedly father of PW2 and brother of Appellant Anita Kharab. PW3 deposed that between 2002 to 2003, he gave Rs. 22 Lakhs to the aforesaid persons for the purpose of investment out of which Rs. 12 Lakhs belong to him and Rs. 10 Lakhs belongs to his brother-in-law Sh. Attar Singh (PW-4).

34. Further, PW-3 also deposed that total sum of Rs.1.78 crores *“was handed over to both the Accused by my friends and relatives and I always accompanied with my friends and relatives at the time of handing over the aforesaid money to the Accused persons.”* He also exhibited the Receipt-cum-Declaration for Rs. 1.78 crores as Ex.X1, which he stated was handed over to him at the house of Ranbir Singh Kharab and Ms. Anita Kharab. Additionally, he also deposed stated that it is signed by his wife Ms. Hira Devi and Ms. Pramila as a witness besides it being signed by both the Appellants.

35. Though, Ld. Trial court heavily relied upon the deposition of PW3, however, from the cross examination of this witness, it is apparent that his testimony is not worthy of reliance. He deposed upon being cross examined that he invested Rs. 12 Lakhs in the company of accused from his savings and savings of his wife. However, he admitted that he did not file any document to show that money was withdrawn from his account and account of his wife. He also stated that once he made payment to Ranbir Singh Kharab by way of cheque of Rs. 1 Lakh. However, in the same breadth he admitted that he did not mention anything about money being transferred to the accused persons through banking channels either in his examination-in-chief or in his complaint or in his statement recorded under Section 161 Cr.P.C.

36. Further perusal of his cross examination would show that

PW-3 deposed that he used to maintain a diary where he used to record payments made to the accused persons. However, he did not produce the said diary stating that the diary got destroyed due to seepage. He further deposed that he gave a copy of the diary to the police. Despite this, no such copy of diary was produced or proved during trial.

37. The witness also admitted in his cross examination dated 14.10.2022 that he has not reflected the investment made in the company of the accused in his income tax returns.

38. Further, as aforesaid the witness also exhibited one receipt Ex.X1 in the course of his deposition. However, he admitted that entire document is typed except for certain details including the amount, the dates and the persons in whose favour the document has been created, which are particularly written in hand.

39. He also admitted that the said document Ex.X1 only states that Ranbir Singh Kharab owes a personal liability towards him alone and not towards any other friend/relative etc.

40. A bare perusal of the document i.e. Receipt-cum-Declaration Ex.X1 would show that this document also states that Rs. 1.78 crores has been taken by Ranbir Singh Kharab in cash as 'loan on interest' from Ranbir Singh Dahiya. It is even more interesting to note that as per contents of the said documents i.e. Ex.X-1, the Appellant Sh. Ranbir Singh Kharab is not the

signatory of the said document. Rather, his wife Ms. Anita Kharab had signed the above said documents as 'Declarant' and Ranbir Singh Kharab signed as Witness No. 1. Witness No. 2 Ms. Hira Devi did not step into the witness box. Ms. Pramila Devi, who also the signatory to receipt Ex. X1, deposed as PW29. This witness, however, failed to support the case of Prosecution, as is apparent from her deposition. She was shown the photocopy Mark 29A by Ld. APP for the State (i.e. Receipt-cum-Declaration Ex.X-1) and though she identified her signatures on it, however, in her entire deposition, PW-29 did not utter a single word regarding execution of the said document, or even the fact that she appended her signatures thereon as a witness.

41. It is also apparent from the contents of the receipt Ex.X1 that as per the said document, a sum of Rs. 1.78 crores was taken by Appellant Ranbir Singh Kharab as loan on interest from Ranbir Singh Dahiya (PW-3). The fact that the said amount has been mentioned as 'loan' again remained unexplained as none of the witnesses explained as to why the alleged investment was referred to as a 'loan'. Prosecution failed to given any justification for the difference in the documentary and oral evidence led on record and this is despite the fact that chargesheet states otherwise as discussed in the preceding paragraphs.

42. The reliance of Ld. Trial Court on the deposition of PW4 also seems to be misplaced in view of the fact that as per PW4, he handed over Rs. 10 Lakhs to PW3 Ranbir Singh Dahiya as a

‘loan’ to invest in some company with Ranbir Singh Kharab. Hence, since the accused persons did not induce PW4 to invest any money in their company, PW4 neither supports the case of the prosecution nor establishes that the accused persons committed the alleged offence of cheating.

43. The next witness relied upon by Ld. Trial Court to convict the Appellants is PW6 Sh. Randhir Singh. In his examination-in-chief itself, PW6 deposed that Ranbir Singh Dahiya is *fufa* of his son-in-law Sh. Pravin Singh Dahiya and Sh. Pravin Singh Dahiya asked him to invest money in the firm of the accused Ranbir Singh Kharab as he was doing business of finance by opening a finance company. In his cross examination, the witness also deposed *‘I had no direct talks with accused. I had given my money to accused persons at the instance of my son-in-law Pravin’*. Thus, the witness talks about no inducement on the part of accused persons, rather claims that he had no direct talks with the accused.

44. Ld. Trial Court further relied upon the deposition of PW8 Sh. Baljeet Singh to arrive at the conclusion that the accused persons have committed the alleged offence. PW8 deposed *‘I did not make investment in the company of accused Ranbir Singh Kharab. I had given Rs. 5 Lakhs to Praveen Dahia as he needs to invest in the firm of Jyoti Fair & Finance of accused Ranbir Singh Kharab in Decmber 2002. Accused Ranbir Singh Kharab gave receipt of Rs. 23 Lakhs to Praveen Dahia s/o Ranbir Singh Dahia*

& I made signature on the same receipt as witness at point B on Ex.PW2/A'. In his cross examination, the witness reiterated 'I lent Rs. 5 Lakhs to Praveen in cash. I did not get any receiving from him in writing as he was my nephew. Whatever dealing I had, I had only with Praveen'.

45. PW29 Ms. Pramila deposed that she is related to PW2 Sh. Pravin Kumar as he is her cousin brother-in-law (*Devar*). She further deposed that in the year 2002 when she visited house of Pravin. Accused Anita, his *Bua* was present there. Sh. Pravin Kumar introduced her with the accused and told that she is running a company in the name and style of Jyoti and that they given 2% monthly interest or double the amount in three years. She further deposed that she invested some amount through her brother-in-law namely Pravin Kumar. In her cross examination, she deposed that whatever money she gave was given by her to Pravin Kumar and voluntarily added that Anita had confirmed telephonically that she had received the money. She also deposed that in the year 2002, she did not have visiting terms with Ms. Anita and never spoke on phone and whenever she talked to accused Anita telephonically the same was done through the phone by Pravin. It is thus apparent that money was handed over by her to PW2 Pravin Kumar and not to accused Anita Kharab. In her cross-examination, she even admitted having received interest on her invested amount from Praveen (i.e. PW-2).

46. In the backdrop of the above testimony of PW-29, it is

further pertinent to note that in his cross-examination recorded on 17.02.2010, PW-2 deposed that *'The assurances was given by accused persons to my father that money will be invested on 3% interest and after one year at the time of settlement of account money can be returned to the persons from whom it was taken on 2% interest and my father can retain the remaining 1% with him. It is correct that my father had to get 1% commission however that was not paid.'*

47. It thus appears from the above deposition of PW-2 that his father i.e. PW-3 was to get 1% commission on investment made in the company of Accused persons.

48. It is also the own case of the Prosecution that the Appellants were running a Finance Company under the name and style of M/s Jyoti Fair Finance Company. IO/Insp. Sher Singh (PW-34) deposed in his examination-in-chief dated 17.12.2021 that in June, 2005, complaints of Praveen Dahiya along with 10 more complaints of other victims were received at the office of EOW. He further deposed that *"the said complaint was against Ranbir Singh Kharab, Anita Kharab and the company namely M/s Jyoti Fair Finance Company and other Directors/officials of the said company."*

49. IO also deposed that he collected various documents pertaining to the company from the ROC besides banks and other authorities. In the course of his cross-examination, he deposed

that during investigation he gave notices to 3-4 Directors of the company. In his further cross-examination dated 01.12.2024, the IO PW-34 further clarified that he gave notices to all the Directors of the company after registration of the FIR except Accused Anita Kharab, she being a lady. He further deposed that initially there were five Directors but only two joined the investigation and two Directors resigned. He further deposed that he probed the role of all Directors but no allegations and evidences were found against other Directors.

50. From the above deposition of the IO, it is apparent that the remaining Directors as well as the company itself have apparently not being arrayed as Accused. There is no explanation whatsoever as to why the company M/s Jyoti Fair Finance Company despite being the company in which the investments were allegedly made by the complainant, his relatives and friends, was not cited as an accused to face the present criminal proceedings.

Conclusion:-

51. In the light of evidence led on record in the course of trial and the submissions made, it is apparent that the Prosecution has failed to bring home the guilt of the Appellants beyond the realm of reasonable doubt. In fact, there are glaring contradictions and discrepancies which have not been appreciated by the Ld. Trial Court in the impugned judgment. On the basis of evidence on record and the discrepancies discussed in the preceding paragraphs of this judgment, I am of the considered opinion that

the Appellants could not have been convicted for the alleged offences. The Appeal is accordingly allowed and the impugned judgment dated 13.12.2023 and order on sentence dated 24.02.2024 are hereby set aside. Both the Appellants are accordingly acquitted. Their bail bonds stand cancelled and sureties discharged.

52. Trial Court Record be sent to the concerned court along with a copy of this judgment. Appeal file be consigned to record room.

**Announced in open court
on 23.10.2024**

**(Kaveri Baweja)
ASJ/Special Judge (PC Act),
CBI-09 (MPs/MLAs Cases),
RADC, New Delhi**