

IN THE COURT OF THE SPECIAL JUDGE (CBI), COURT
NO.IV, BHUBANESWAR.

P R E S E N T : Shri S.K.Mishra, O.S.J.S.,
Special Judge (CBI),
Court No.IV, Bhubaneswar.

T.R.Case No.27/2007
(Arising out of R.C. No.17 (A)/2006)

Republic of India Prosecution.

-Versus-

1. D.Ganapati Rao, aged about 69 years,
S/o. D.V.Subha Rao, permanent resident of
Vill./PO/PS-Rajahmundry, Dist.-East Godavari (AP).
2. Nabin Charan Nayak, aged about 51 years,
S/o.Laxman Nayak, permanent resident of Vill.-
Bachhara Patna, PS-Jatni, Dist.-Khurda, Orissa.
3. Nabin Kishore Panda, aged about 53 years,
S/o.Gopabandhu Panda, permanent resident of
Vill.-Puruna Patna, PO-Chikalkhandi,
PS-Chhatrapur, Dist.-Ganjam (Orissa).

.... Accused Persons.
(ON BAIL)

For the Prosecution : Sri Ajay Singh, PP, CBI.

For the Accused No.1 : Sri G.Acharya & Associates.

For the Accused No.2 : Sri L.N.Pattnaik & Associates.

For the Accused No.3 : Sri M.B.Das & Associates.

Date of argument : 18.4.2016

Date of judgment : 25.4.2016

Offence u/s.120-B, 420, 468, 471 of I.P.C. and Under Sec. 13(1)
(d) read with Sec.13(2) of P.C.Act, 1988.

JUDGMENT.

Accused persons faced their trial for alleged commission of offences punishable under Sections 120-B, 420, 468, 471 of Indian Penal Code and Under Section 13(1)(d) of the Prevention of Corruption Act,1988 punishable u/s. 13(2) of the P.C.Act for entering into criminal conspiracy with each other and in pursuance of said conspiracy cheated the United Bank of India, Sahidnagar Branch, Bhubaneswar, caused wrongful loss to the bank to the tune of Rs.3,87,000/-, dishonestly inducing the above bank to deliver the above amount, used forged documents for the purpose of cheating the bank, used the aforesaid forged documents as genuine, being public servants, by corrupt and illegal means, by abusing official position as such public servants and for obtaining pecuniary advantage to the tune of Rs.3,87,000/- in the capacity of a public servant i.e. Sr. Loco Inspector, Booking Clerk and Head Clerk of East Coast Railway, Khurda Road.

2. Adumbrated in brief, prosecution case may be recapitulated as follows: Accused D. Ganapati Rao was functioning as Sr. Loco Inspector, Office of the Sr. DPO, accused Sri Nabin Charan Nayak, Booking Clerk and accused Sri Nabin Kishore Panda, Head Clerk, Settlement Section office of the Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road cheated the United Bank of India, Sahidnagar Branch, Bhubaneswar to the tune of Rs.20 Lakhs approximately, in the matter of availing United Personal Loans from the said bank by using forged and fabricated pay slips and confirmation letter. It is alleged that accused D. Ganapati Rao and accused Nabin Kishore Panda applied for United Personal Loans from UBI,

Sahidnagar enclosing forged and fabricated pay slips, purported to have been signed by their concerned Drawing & Disbursing Officer. Confirmation letters regarding the genuineness of the pay slips were also submitted to the bank under the purported signatures of the DDO. It is also reported that the DDO who should have actually signed on the confirmation letters was Sr. Divisional Personal Officer, East Coast Railways, Khurda-Road. Accused Nabin Kishore Panda in course of his official duty as Head Clerk in the office of the Sr. Divisional Personnel Officer, fraudulently signed as the DDO on the said pay slips and confirmation letters submitted to the bank and basing on those fabricated pay slips and formation letter, UBI Sahidnagar Branch sanctioned United Personal Loans to the above accused employees and other employees of the Railway to the tune of Rs.17,77,500/- and all the above loan became NPA subsequently and the outstanding balance in the above accounts as on 13.04.2006 is Rs.20 Lakhs approximately with interest. On getting reliable information on 13.04.2006, Superintendent of Police, C.B.I. Bhubaneswar registered R.C. Case No. 17 of 2006 u/s. 120-B, 420, 468, 471 IPC and u/s. 13(2) read with Section 13(1)(d) of the P.C.Act.

Being entrusted with Sri S.K. Behera, Inspector C.B.I. (P.W.10) took up investigation. During the course of investigation, the employees of the East Coast Railways and the bank staffs were examined. The questionable documents containing the initials of the accused persons were not sent to Govt. Examiner of Questioned Documents, C.F.S.L. Kolkata for examination. Sanction order u/s. 19 of the P.C.Act, 1988 was obtained from the Sr. Divisional Commercial Manager, East

Coast Railway, Khurda Road to commence prosecution against accused persons under Sections 120-B, 420, 468, 471 IPC and under Sec. 13(2) read with Section 13(1)(d) of the P.C.Act, 1988 in which defalcation amount in respect of accused D. Ganapati Rao and Nabin Charan Nayak was stated to be Rs.2,00,000/- and Rs. 1,87500/- respectively. After completion of investigation charge sheet was submitted on 7.9.2007 against the accused persons while the other loanees were not sent up for trial. The court took cognizance of the said offences on 07.09.2007. Charge for the said offences was also framed against the accused persons.

3. The plea of the defence is a complete denial of the allegations of the prosecution.

4. In order to prove its case, the prosecution examined 10 witnesses. Out of which P.W.1 is the Vigilance Inspector and on his production I.O. seized certain documents as per seizure list Ext.1, P.W.2 is Sr.Divisional Personal Officer, East Coast Railway Khurda Road for the period 2003 and 2004. P.W.3 is the Sr. Divisional Personnel Officer, Khurda Road Division, who has stated about the mode of issuance of salary certificates for the purpose of any loan, P.W.4 who is the Manager of United Bank of India, has stated about the eligibility criteria for getting personal loan, P.W.5 is the Sr. Divisional Commercial Manager and is the sanctioning authority for prosecution of the accused. P.W.6 is the Manager, Advance in United Bank of India, P.W.7 and 8 are the Sr. Manager of United Bank of India Saheednagar Branch, P.W.9 is the Sr. Branch Manager of United Bank of India, Saheednagar Branch, Bhubaneswar and P.W.10 is the

Investigating Officer. Documents vide Ext.1 to Ext.26 have been marked on behalf of the prosecution.

No witness has been examined on behalf of the accused persons and no document has been exhibited from the side of the defence.

5. Now the points for determination are:

- (i) Whether the accused persons were the public servants during the year 2004 as alleged?
- (ii) Whether the accused persons entered into criminal conspiracy with each other and in pursuance of the said conspiracy cheated the United Bank of India, Sahidnagar Branch, Bhubaneswar in the matter of availing United Personal Loans from the bank by using forged and fabricated pay slips and confirmation letters and caused wrongful loss to the bank to the tune of Rs. 3,87,000/-, as alleged ?
- (iii) Whether the accused persons during the above period acting in the capacity of Sr. Loco Inspector, Booking clerk and Head Clerk respectively, cheated the United Bank of India, Sahidnagar Branch Bhubaneswar by dishonestly inducing it to deliver a sum of Rs.2,00,000/- to D. Ganapati Rao and Rs.1,87,000/- to Nabin Charay Nayak forging the pay slips and confirmation letters, as alleged ?
- (iv) Whether the accused persons used forged pay slips and confirmation letters intending that it shall be used for the purpose of said cheating, as alleged?
- (v) Whether the accused persons fraudulently used the aforesaid forged documents as genuine documents which they all knew or had reason to believe, at the time they used the same, to be forged documents, as alleged ?
- (vi) Whether during the period 2004 the accused persons by corrupt or illegal means or by abusing their position as public servants obtained for themselves valuable thing or pecuniary advantage to the tune of Rs.3,87,500/- from

United Bank of India, Saheednagar Branch, Bhubaneswar, as alleged?

(vii) Whether the prosecution has been properly launched?

POINT NO.I.

6. In order to fasten the liability on a person with the charged offence the status public servant is a sine qua non for the specified period. The prosecution has done it through P.W. 2 Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road. He has stated in his evidence that the Branch Manager and some other officers of United Bank of India, Sahidnagar Branch had come to his office and they had verified the documents relating to salary certificate and authorization slip in the loan documents of one Ganapati Rao and Nabin Chandra Nayak, both employees of Khurda Road Railway Division. Further he has stated that he is well acquainted with the handwriting and the signature of N. Panda, Head Clerk who was the custodian of the seal of Sr. Divisional Personnel Officer. P.W.5 in his evidence has stated that on 30.8.2007 he was posted as Sr. Divisional Commercial Manager, Khurda Road Division at Jatni, East Coast Railway and at that time accused Nabin Chandra Nayak was working as Booking Clerk. Similarly, in the statement of the accused persons recorded by the court, the accused persons have not denied that they were working in East Coast Railway. No challenge is made to the status of the accused persons as the public servants covering the relevant year of 2004. Hence, the said aspect is proved to the hilt by the prosecution.

POINT NO.II.

7. P.W.1 K. Madhusudan Rao who was working as Vigilance Inspector, East Coast Railway, Chandrasekharapur, P.W.2 B. Somulu, Sr. Divisional Personnel Officer, East Coast Railway and P.W.3 Megharay Murmu, Sr. Divisional Personnel Officer, Khurda Road Division have stated about the procedure regarding grant of salary certificate to an employee for obtaining a loan from any organization. According to them, an employee seeking salary certificate has to file an application addressed to the Sr. Divisional Personnel Officer, Railway stating the reasons and the same is processed in the personal file of the concerned employee. The concerned Asst. is required to place the note sheet with the particulars of his salary statement. After approval, the cashier is required to prepare certificate in duplicate and to place it in the file. After signature, one certificate is given to the applicant and other copy is retained in the file. According to P.W.2, the Branch Manager and some other officers of United Bank of India, Sahidnagar Branch had come to their office and they had verified the documents relating to salary certificate, authorization slip and the loan documents of accused Ganapati Rao and Nabin Chandra Nayak. Therefore, he had occasion to go through the loan documents. He proved the loan document of accused Ganapati Rao vide Ext.4. According to him their office had not issued salary certificates vide Ext.4/1, 4/2, Ext.5/1 and 5/2 and authorized letter vide Ext.4/3. He has stated that he is acquainted with the handwriting and signature of accused N. Panda, Head Clerk of their office who had signed in the salary certificate and authorization letter vide Ext.4/4,

4/5, and salary certificate vide Ext.5/3. He has further stated that accused N. Panda was the custodian of the office seal of Sr. Divisional Personnel Officer and he used the above seal and the salary certificates have not been issued officially and the authorization letter vide Ext.5/4 has not been issued officially. According to him, the use of official seal of the Sr. Divisional Personnel Officer by accused N. Panda is illegal.

8. To prove the veracity and genuineness of the salary certificates, it is now to be seen as to whether the same has been issued to the employees concerned in proper way and with proper seal. All the above witnesses have proved the salary certificates of 2 and 3 series i.e. Ext.2 to Ext.2/11 and Ext.3 to Ext.3/11. On perusal of the above documents it is seen that those are the attested copies of the pay-in-slips of accused D. Ganapati Rao and accused N.C. Nayak. The above pay-in-slips have been supplied to the United Bank of India, Saheednagar Branch for the purpose of availing loan. On further perusal of the pay-in-slips, it is noticed that the same has not been signed and the seal of the Drawing and Disbursing Officer has not been put on it. Therefore, it is clearly proved that the same are not genuine for the purpose of availing any loan from any financial institution. Now, it is to be seen whether the above pay-in-slips have been prepared by the accused persons or not. It is not the evidence of prosecution witnesses, that the above pay-in-slips have been prepared by the accused persons and signed by them for the purpose of availing any loan. Nowhere, the official witnesses like P.Ws. 1,2 and 3 have stated that the above named accused persons have signed on the said pay in slips. It has been brought out during

cross-examination of PW-2 that he does not know who submitted the documents vide Exts.4 and 5 before the bank and when the same were submitted and that similar rubber stamp used in Exts.4/4, 4/5, 5/3, 5/5 and 14 can be prepared by other agencies. PW-2 has further stated that he does not remember when the officials of the concerned bank met him in connection with this case and the name of the said bank and that the official and staff of Oriental Bank of Commerce met him, but the official of United Bank of India had never met him and the documents in question were not sent to him.

9. PW-3 during cross-examination has stated that there are rules and regulations for different activities of the Railway Department and that Exts.4/1 and 4/2 are computer generated salary slips and that he saw the above documents for the first time in Court while deposing this case. He has also stated that salary slips which had been prepared through computer are being given to the employee without any signature. PW-3 has further deposed that the signatures appearing on the above authorization letter are not his signatures in the authorization letters vide Exts.4/1 and 4/2. Further he has stated that he is not sure if the contents of Ext.14 are in the handwriting of accused, but it appears that the contents are in the handwriting of the accused. But he has failed to prove as to which particular accused has put his signature on the said authorization letters.

10. Now coming to the evidence of P.W. 4, it is established that Purna Chandra Pradhan, Ex-Manager of UBI, Saheednagar Branch had accorded sanction of loan in favour of D. Ganapati Rao and Nabin Chandra Nayak on 13.9.2004. When the loanees did not repay the loan amount, United Bank of India,

Sahidnagar Branch wrote a letter to the Sr. Divisional Personnel Officer, East Coast Railways, Jatni to deduct the loan installments from their salary as undertaking was given by their office. He proved the letter of reply Ext.16 given by the Sr. Divisional Railway Manager, East Coast Railway, Jatni that there was no undertaking was given for deduction of the installments. But in his cross-examination he has stated that he had not verified the genuineness of the documents furnished by the concerned loanees, in whose favour loans were sanctioned by his predecessor. Further, in the cross-examination he has stated that he cannot say the names of the concerned persons, who have given their signatures vide Ext.4/4, 4/5, 5/3, 5/5 and signature at the bottom of Ext.14. Further, in cross-examination P.W.4 has stated that the Branch Manager before sanctioning the loans, has to be satisfied about the capability of the said loanee to repay the loanee and about the genuineness of the documents furnished by the loanee.

11. During cross-examination, PW-4 has deposed that he has not verified the genuineness of the documents furnished by the concerned loanees, in whose favour loans were sanctioned by his predecessor, since he (PW-4) was not posted in that bank at the relevant time and therefore, he could not say who had submitted the relevant documents and at what time and before whom the said documents were submitted, for the purpose of sanctioning of the loan. He has also stated that he was not serving in the branch in question, when the document vide Ext.15 was issued and Ext.15 is one Xerox copy of a letter and he could not say what happened to the original letter and that he does not remember the full name of Sri Murmu, who had

sent the said letter, in his capacity as Manager (Operation), UBI, Saheed Nagar Branch and Sri Murmu is the best person to say the basis on which, he had sent the said letter. He has further stated that Ext.4-series, Ext.5-series and Ext.14 are the documents on the basis of which, the loans were sanctioned and that he could not say the names of the concerned persons, who have given their signatures vide Exts.4/4, 4/5, 5/3 5/5 and signature at the bottom of Ext.14. He has also deposed that he does not remember if no letter was sent by the concerned bank to the Railway Department, before sanction of the loan, to ascertain about the genuineness of the documents furnished by the loaneer and that there is no document in the record of this case to show if any such letter was sent. He has further stated that Exts.15 and 16 are Xerox copies of documents and none has attested the said copies to be the true copy of original of any document.

12. Similarly P.W.6 who was manager Advance in United Bank of India at Saheednagar, Bhubaneswar has stated in his evidence that he does not know the accused persons of this case personally and on verification of the loan ledger, he could know that in the year 2003 loan was sanctioned in favour of D.Ganapati Rao and N.C. Nayak in UBI saheednagar Branch. He has not stated anything against the accused persons. P.W.8 in his evidence has stated that during investigation, he produced loan file of accused persons vide Exts.4 and 5 and he proved the circular issued by the Head Office of the bank vide Ext.18 and Ext. 19.

P.W.7 the then Sr. Manager of United Bank of India, Saheednagar Branch has stated that a loan of

Rs.1,87,500/- was sanctioned in favour of Nabin Chandra Nayak and Urmila Nayak and Rs. 2,00,000/- in favour of D. Ganapati Rao and D.Jaya by him on 13.09.2004 who have savings bank accounts in their branch. According to him, after verification of documents, Dibyasingha Pathy, manager, Advance of the branch processed the loan applications and recommended for sanction and accordingly he sanctioned the loan. He proved the loan sanction order vide Ext.4 and 5. He also proved the loan processing sheets, letter of authority of borrower issued by the accused Nabin Chandra Nayak and D. Ganapati Rao and the letter dtd.1.9.2004 issued to their Branch by Sr. Divisional Personal Officer, East Coast Railway, Khurda Road. Since the accused became defaulter in repaying the loan, their branch wrote letter vide Ext.15 to which the Sr. Divisional Personal Manager replied vide Ext.16 indicating therein that the bank does not undertake for ensuring repayment of loan of railway employee.

PW-7 during cross-examination has deposed that Ext.15 does not reveal the name and designation of their staff from whom Sri Baisnab Charan Mohanty ascertained that fraud has been practiced while submitting documents along with application for loan and that Ext.15 does not show that any written report was submitted by their said staff to Sri Mohanty, but by that time no written information was received from the officials of East Coast Railway and that subsequently written information was received from the officials of East Coast Railway regarding the fraud in question, only after they received the letter from their branch vide Ext.15.

13. P.W.9 the then Sr. Branch Manager, United Bank of India, Saheednagar Branch in his evidence has stated that bank has given a personal loan to D. Ganapati Rao and D. Jaya as per Ext.4 and to accused Nabin Chandra Nayak and Urmila Nayak as per Ext.5. Both the loan applications were processed by Dibyasinga Pathi, the then Manager Advance of UBI and the loan was sanctioned by P.W.7 Purna Chandra Pradhan. But in his cross-examination he has stated that he has no personal knowledge regarding sanction of loan as per Ext.4 and 5. Normally, the bank after being satisfied prima facie regarding the criteria of loan and genuineness of loan document, sanction the personal loan.

So from the above evidence of P.W.7 and 9 , it is forthcoming that PW-7 has sanctioned the loan in favour of accused persons D. Ganapati Rao and Nabin Chandra Nayak after being processed by Dibyasingha Pathy, manager Advance.

14. PW-10 (the IO) during his cross-examination has stated that he has not ascertained from PW-7 regarding the name and designation of the person, from whom he ascertained that accused Sri Nabin Kishore Panda has signed on Exts.4/4, 4/5, 5/3, 5/5 and on Ext.14. He has further stated that although he has ascertained about the pecuniary loss to the bank, he has not directed his investigation if accused N.K.Panda had obtained any pecuniary gain for himself.

15. There is no evidence on record that accused persons D. Ganapati Rao and Nabin Chandra Nayak induced the bank to deliver money towards loan. None of the employees of the bank as well as the bank officers P.Ws.7 and 9 have stated that the accused persons have submitted false pay-in-slips and

undertakings at the time of process and sanction of loan. Breach of procedure without involving any act of fraud or deception cannot amount to cheating. In order to bring home a case under the ambit of Section 420 IPC, not only cheating simplicitor but only dishonest inducement to person sought to be deceived to deliver any property are required to be proved. In the case at hand, neither any inducement by accused persons to sanction the loan amount in their favour nor deception from the very inception to grab that amount is proved beyond reasonable doubt. It is the duty of the loan sanctioning authority that before sanction of any loan they should have verified the post held by the employee, their salary, capacity to refund the loan amount, genuineness of pay-in-slips, undertakings and other documents submitted before the authority for sanction of loan. The salary slips submitted before the bank for the purpose of loan amount has not been signed and sealed by any authority. So, it came to light that the P.W.7, 9 and one Dibyasingh Pathy the officers of the bank has not verified the pay-in-slips of the accused persons in proper way. The evidence of P.Ws.1,2 and 3 the railway officials is not corroborated with the evidence of P.Ws.7 and 9 to prove that the accused persons have submitted the false pay-in-slips before the Bank authority for sanction of loans in their favour. Prosecution has also failed to prove that the accused persons entered into criminal conspiracy with each other and in pursuance of the said conspiracy cheated the United Bank of India, Saheednagar Branch, Bhubaneswar in the matter of availing loan from the bank by using forged and fabricated pay-slips and confirmation letters and caused wrongful loss to the

bank to the tune of Rs.3,87,000/-. The evidence of P.W.10 the Investigating Officer also remained silent implicating the accused persons in the alleged crime. The I.O. has also not sent the disputed signature and the documents for examination through any handwriting expert.

16. Learned PP, CBI by relying on the decisions reported in 2015 (3) J.C.R. 789 Dr. Dukhit Ram-Vrs.-State of Jharkhand, Jharkhand High Court and Gulzar Ali-Vrs.-State of Himachal Pradesh (SC), 1998 (4) JT 342, submitted that proof of handwriting and signatures of the accused persons need not be proved by any handwriting expert in view of Section 47 of the Indian Evidence Act as the same has been duly proved by the evidence of PW-3.

This Court has gone through the above decisions. The facts and circumstances of the said cases are quite different from the facts and circumstances of the present case and therefore, the said decisions are not applicable to the present case.

Learned defence counsel has relied upon the decisions reported in 1992 CRI.L.J.750 Santosh Kumar Padhy -Vrs.- The State of Orissa, 1995 CRI.L.J 396 Punjab and Haryana High Court State of Haryana-Vrs.- Parmanand and OLR Vol.-1 1984, 10 Upendranath Nayak & others-Vrs.- Union of India and submitted that the alleged forgery documents in question by the accused persons, have not been proved beyond reasonable doubt and the vague statement of PW-3 in this regard, cannot be accepted in the absence of any proof by any handwriting expert. He has further submitted that the allegation made by the prosecution that the documents in question were forged by

the accused persons, has not been duly proved in accordance with Section 47 of the Indian Evidence Act.

In view of the vague statement of PW-3 and lack of any other reliable evidence adduced by the prosecution and in view of the principles as settled in the decisions relied upon by the learned defence counsel, as referred to above, this Court finds that the prosecution has miserably failed to prove that the documents in question were forged by any of the accused persons.

17. Another lacuna of the prosecution in this case is that the evidence of PWs-4 and 7 regarding author of the document vide Ext.15 is contradictory. The very existence of the original documents vide Exts.15 and 16 becomes doubtful as the same have not been produced and proved by the prosecution in this regard and no satisfactory explanation to that effect, has been furnished by the prosecution.

POINT NO.III, IV and V :

18. From the evidence of P.Ws.7 and 9 it is clearly proved that on being satisfied with the pay-in-slips and confirmation letter, One Dibyasing Pathi has processed the loan application and P.W.7 has sanctioned the loan in favour of accused D. Ganapati Rao and Nabin Chandra Nayak. It is not the case of prosecution that the accused persons were not working in the East Coast Railway and being salaried persons, United Bank of India Saheednagar Branch has sanctioned the loan in favour of accused D. Ganapati Rao and Nabin Chandra Nayak. Nowhere, P.Ws.1,2,3 and 7 and 9 have stated that accused persons have prepared the pay-in-slips for the purpose of loan. No

signatures of the accused persons in the pay-in-slips have been proved by the prosecution.

The offence under Sec.420 of IPC constitutes of the following ingredients:-

- (1) Deception of any person.
- (2) Fraudulently or dishonestly inducing such person-
 - (i) To deliver any property any person, or
 - (ii) To consent that any person shall retain any property.
- (3) (i) Intentionally inducing the person to do or omit to do anything which he would not do or omit, if he were not so deceived; and
 - (ii) Such act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In order to bring a case within the four corners of Section 420 of the I.P.C., prosecution is required to prove beyond reasonable doubt commission of offence of 'cheating' as defined in Sec. 415 of the I.P.C. by the accused persons.

Similarly the following ingredients constitute the offence under Section 468 of the IPC :-

- (1) The document in question is forged,
- (2) Accused forged the documents, and
- (3) Accused forged the document intending that the forged document would be used for purpose of cheating.

Similarly, the offence under Sec.471 of the IPC constitutes of the following ingredients:-

- (1) The document is a forged one'
- (2) Accused used the document as genuine;

(3) Accused knew or had reason to believe that it was a forged document, and

(4) Accused used it fraudulently or dishonestly, knowing or having reason to believe that it was a forged document.

19. In the present case, only P.W.2 who was the Sr. Divisional Manager, East Coast Railway in his evidence has stated that their office had not issued the so called salary certificate vide Ext.4/1, 4/2, 5/1 and 5/2. According to him he is acquainted with the handwriting and signature of accused N. Panda Head Clerk of his office who has signed in the salary certificates and authorization letter. But on perusal of the salary certificates vide Ext.2 to 2/11 and Ext.3 to 3/11, it is noticed that no signature of any person has been appended on it. Further, it has not been sealed by any authority. Similarly in the authorization letter vide Ext.4/3, Ext.5 and Ext.5/10 although the seal of the Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road has been appended, but the prosecution has failed to prove that the signatures appear on it are the signatures of accused Nabin Kishore Panda, Head Clerk. Similar discrepancies are found from the pay-in-slips Ext.5/1. Although the seal of the Sr. Divisional Personnel Officer has been put on it, but the prosecution has failed to prove the signature appears on it is not only but the signature of accused Nabin Kishore Panda.

20. In fact, in course of argument, learned counsel for accused Nabin Kishore Panda had submitted that there is no positive material on record to implicate the accused with the offence of commission of forgery for the purpose of cheating inasmuch as it has not been alleged any of the

witnesses that the accused Nabin Kishore Panda made the forged document. On perusal of the statement of the witnesses, it is found that none of them have alleged that it was the accused persons who forged the pay-in-slips and authorization letter. Allegations in the case cannot be appreciated in isolation. In absence of any material indicating the required intention or knowledge on the part of the accused persons in making a forged document or using the same with the required knowledge, criminal proceeding against the accused persons will amount to an abuse of process of court. Although the bank has been able to prove that the loan amount of Rs.2,00,000/- and Rs.1,87,500/- has been sanctioned in favour of the accused D. Ganapati Rao and Nabin Chandra Nayak respectively, at the same time prosecution has failed to prove beyond reasonable doubt that the documents received by the Bank are forged one and the accused persons fraudulently or dishonestly, knowing or having reason to believe that it was a forged document submitted it before the bank.

POINT NO.VI.

21. The element of dishonesty is implicit in clause 1, 2 and 3 of Section13(1)(d) of P.C.Act,1988 . From the evidence analyzed in context of other points it is apparent that accused persons neither for themselves nor for any other person had obtained either cash Rs.3,87,500/- fraudulently or any pecuniary advantage from the Bank. The evidence as led by the prosecution, has failed to prove beyond reasonable doubt that money tendered by the United Bank of India towards loan in favour of the accused

persons D. Ganapati Rao and Nabina Chandra Nayak on production of forged and illegal documents by the accused persons. The complicity of others which was revealed leaves enough doubt about the involvement of the accused persons in exclusion of others to commit misconduct as defined u/s. 13(1)(d) of the P.C.Act,1988.

22. Law of sanction as required u/s.19 of the P.C.Act, 1988 is well enumerated in the decision reported in **2014 Crl.L.J 930 (S.C.) C.B.I. -vrs- Ashok Kumar Agarwala**. In that decision Their Lordships have summarized the legal position in the following words:

“8. (a) The prosecution must send the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, draft charge sheet and all other relevant material. The record so sent should also contain the material/document. If any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.

(b) The authority itself has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.

© The power to grant sanction is to be exercised strictly keeping in mind the public interest and the protection available to the accused against whom the sanction is sought.

(d) The order of sanction should make it evident that the authority had been aware of all relevant facts/ materials and had applied its mind to all the relevant material.

(e) In every individual case, the prosecution has to establish and satisfy the court by leading evidence that the entire relevant facts had been placed before the sanctioning authority and the authority had applied its mind on the same and that the sanction had been granted in accordance with law”.

23. In the above decision Their Lordships have also reiterated that Court must examine the issue regarding failure of justice in the true sense or a camouflage argument relating to sanction in view of the reliable and categorical evidence of PW-5 the sanctioning authority, who has given the sanction order vide Ext.17.

Tested in the touchstone of above dictum, the prejudicial plea of defence regarding sanction does not appear meritorious.

In the circumstances of this case, the defence cannot claim prejudice for omission in the sanction. No other point being urged challenging the initiation of prosecution, it can be concluded that the launching of prosecution is no way defective on account of any illegality or irregularity.

24. Consequent upon above analysis, the complicity of accused persons for submission of forged documents before the bank authority for sanction of loan remains doubtful as the sequential stuff of loan amount is found intact in comparison with loan applications. Although the prosecution has proved that the accused persons have availed the loan from United Bank of India, it is the bounden duty of the bank to recover the same in accordance with law besides from their salary, as the prosecution has failed to prove that on submission of forged and fake documents, the said loan has been sanctioned.

In the result, this Court finds the accused persons are not guilty of the offences punishable under Sections- 120-B, 420, 468, 471 IPC and u/s. 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and they are acquitted from the said charges under Sec.248(1) Cr.P.C. The bail bonds stand cancelled.

Special Judge (CBI),
Court No.IV, Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 25th day of April, 2016.

Special Judge (CBI),
Court No.IV, Bhubaneswar.

List of witnesses examined for the prosecution :

PW-1	K.Madhu Sudan Rao.
PW-2	B.Somulu.
PW-3	Meghray Murmu.
PW-4	Parsuram Mohanty.
PW-5	Kuber Chandra Pradhan.
PW-6	Pranaya Kumar Das.
PW-7	Purna Chandra Pradhan.
PW-8	Bijay Kumar Mishra.
PW-9	Bibhu Pada Das.
PW-10	Srikanta Kumar Behera.

List of witnesses examined for the defence :-

Nil.

List of exhibits marked for the prosecution :-

Ext.1	Seizure list.
Ext.1/1	Signature of PW-1.
Exts.2 to 2/11-	Pay slips.
Exts.3 to 3/11-	Pay slips.
Ext.4	Loan document.

- Exts.4/1 & 4/2- Salary Certificates.
 Ext.4/3 Letter.
 Exts.4/4 & 4/5- Signatures of N.Panda.
 Ext.5 Loan application.
 Exts.5/1 & 5/2- Salary Certificates.
 Ext.5/3 Signature of N.Panda.
 Ext.5/4 Letter.
 Ext.5/5 Signature of N.Panda.
 Ext.6 Seizure list.
 Ext.6/1 Signature of PW-2.
 Exts.7 & 8 C.L. Applications.
 Ext.9 Seizure list.
 Ext.9/1 Signature of PW-2.
 Ext.10 Application.
 Exts.11 & 12 Leave Applications.
 Ext.13 Seizure list.
 Ext.13/1 Signature of PW-2.
 Ext.14 Authorization letter.
 Ext.15 Letter.
 Ext.16 Letter.
 Ext.17 Sanction Order.
 Ext.17/1 Signature of PW-5.
 Ext.5/6 Signature of PW-7 in Ext.5.
 Ext.5/7 Loan processing sheet.
 Ext.5/8 Signature of Dibyasingh Pathy.
 Ext.5/9 Letter of authority of borrower issued by accused Nabin Ch. Nayak addressed to Divisional Personal Officer, East Coast Railway, Khurda Road.
 Ext.5/10 Letter dt.1.9.2004 issued to the branch by Sr. Divisional Personal Officer, East Coast Railway, Khurda, Road.
 Ext.4/6 Signature of PW-7 in Ext.4.
 Ext.4/7 Loan processing sheet.
 Ext.4/8 Signature of Dibyasingh Pathy in Ext.4.
 Ext.4/9 Letter of authority of borrower issued by the accused D.Ganapati Rao addressed to Divisional Personal Officer, East Coast Railway, Khurda Road.
 Ext.18 Circular issued by the Head Office of the bank regarding personal loan.
 Ext.19 Circular issued by the Head Office of the bank regarding personal loan.
 Ext.4/10 Signature of Purna Chandra Pradhan in Ext.4.
 Ext.5/11 Signature of Purna Chandra Pradhan in Ext.5.
 Ext.20 F.I.R.

Ext.20/1 Signature of Pronab Mohanty in Ext.20.
Ext.20/2 Information sheet.
Ext.1/2 Signature of PW-10 in Ext.1.
Ext.6/2 Signature of PW-10 in Ext.6.
Ext.9/2 Signature of PW-10 in Ext.9.
Ext.13/2 Signature of PW-10 in Ext.13.
Ext.21 Seizure list.
Ext.22 Seizure list.
Ext.23 Seizure list.
Ext.21/1 Signature of PW-10 in Ext.21.
Ext.22/1 Signature of PW-10 in Ext.22.
Ext.23/1 Signature of PW-10 in Ext.23.
Ext.24 Document.
Ext.25 Document.
Ext.26 Document.

List of exhibits marked for the defence :-

Nil.

List of M.Os. marked for the prosecution :-

Nil.

List of M.Os. marked for the defence :-

Nil.

Special Judge (CBI),
Court No.IV, Bhubaneswar.